

H. J. ANDERSON, ADMINISTRATOR OF ELBERT ANDERSON.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of

H. J. ANDERSON, ADMINISTRATOR OF ELBERT ANDERSON, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Depositions and other documents in support of the claim, with exhibits numbered from 1 to 25, transmitted to the House of Representatives, excepting 1, 2, 5 and 8, being account and letter books, are retained in the clerk's office, subject to the order of Congress :
3. Copies of letters read in evidence by the Solicitor of the United States, and transmitted to the House of Representatives.
4. Solicitor's brief on the law and facts, Nos. 1 and 2.
5. Claimant's brief.
6. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 5th day of December,
[L. s.] A. D. 1859.

SAMUEL H. HUNTINGTON.
Chief Clerk Court Claims.

THE UNITED STATES COURT OF CLAIMS

HENRY JAS. ANDERSON, administrator of ELBERT ANDERSON, deceased,
against THE UNITED STATES.

The petition of the above named claimant respectfully shows to this court :

That the above named Elbert Anderson, deceased, was, during the years 1812-'13 and '14, contractor for the subsistence of the army of the United States. That the said Elbert Anderson, deceased, entered

into two several contracts and agreements supplementary thereto with the United States, dated respectively the 7th of November, 1811, and the 25th day of February, 1813; copies of which are hereunto annexed, marked A and B. That under the said contracts the said Elbert Anderson, deceased, made certain claims against the United States, hereinafter more particularly specified, being partly for amounts actually due him by the terms of the said contract, partly by way of compensation for articles furnished and services rendered beyond the requisitions of the said contracts, and partly by way of indemnity or compensation for alleged breaches of the covenants therein contained by the United States. And this claimant further shows, that he is the sole legal representative of the said Elbert Anderson, deceased, and that the said claims are now owned by the following parties, to wit: Theodore A. Bailey, administrator of Theodorus Bailey, deceased, of two-eighths, which said two-eighths were owned by the said Theodorus Bailey, as having been interested to the extent of two-eighths in the execution of the said contracts; James Thorne, of one-eighth of the claims arising under the contract of 1813, as having been interested to the extent of one-eighth in the execution of the said contract; Thomas Lord, the son-in-law of the said Elbert Anderson, deceased, of two-eighths of the claims arising under both contracts, which said two-eighths were transferred to him by the said Elbert Anderson, deceased, and Henry James Anderson, administrator of Elbert Anderson, deceased, of four-eighths of the claims arising under the first contract, and three-eighths of those arising under the second contract, these being the proportions of the said claims owned by the said Elbert Anderson at the time of his decease. That the above named parties are the only persons interested in or owning any portion of the said claims. That an account of the said claims, with some others, was rendered to Peter Hagner, the Third Auditor of the War Department, on the 12th day of August, 1823, and on the 16th day of June, 1824; and that the said Peter Hagner reported adversely to the same; and that his reasons for so reporting are stated at length in a letter written by the said Peter Hagner, dated the 9th of February, 1825, and addressed to the Committee on Claims of the House of Representatives. That the claims were thereupon referred to Richard Cutts, the Second Comptroller, and that the said Richard Cutts allowed two claims not referred to in this petition, and confirmed the report of the Third Auditor as to others, and referred others to the action of Congress. That the report of the said Richard Cutts is dated the 16th day of July, 1824.

That a number of the said claims were then referred to the Secretary of War, and that he reported adversely to some of the same, and referred others to the action of Congress. That the said report is dated the 12th day of August, 1824.

That the said claims, with some others, have been presented to Congress at various times, and that the reports made by the Committee on Claims on the said claims are dated 10th March, 1826, 2d and 18th February, 1831, 5th May, 1832, and 13th December, 1833, 4th February, 1839, and 10th July, 1840, and may be seen in the volumes of reports of committees of the House of Representatives—Reports No. 57, 2d session 21st Congress; No. 465, 1st session 22d Congress; No. 27,

1st session 23d Congress ; No. 152, 3d session 25th Congress ; No. 692, 1st session 26th Congress, and that the above reports were adverse to the claims presented by this petition, and that since the last above mentioned date, the said claims have never been presented to Congress. And this claimant further shows, that the following is a list of the claims which he makes by this petition :

1st. (a.) That by the terms of said contract dated the 7th November, 1811, the said Elbert Anderson, deceased, agreed with the United States to furnish provisions for the army of the United States in and adjacent to the State of New York. That the said provisions were to consist of rations to be issued to the soldiers, and that the contents of each ration are specifically enumerated in the said contract. That the said contractor, in addition to the said provisions, did furnish to the United States a large number of casks and packages, boxes and barrels, wherein the same were contained, and that the said casks and packages were retained and used by the United States, and never were returned to the said contractor. That the value of the said casks and packages so furnished and retained by the United States was \$13,972 30.

That by the universal practice of the United States under previous contracts, and by the various cotemporaneous decisions of the heads of department, the United States were bound to allow separate compensation for such casks and packages, and that the contractor accordingly claimed an allowance therefor.

That the United States have never allowed the said contractor any compensation for the casks, etc., so furnished to and used by them ; and this claimant therefore asks compensation and indemnity of the United States in the said sum of \$13,972 30, together with interest on the same from the date at which the claim accrued.

(b.) That by the terms of the said contract dated the 25th of February, 1813, the said Elbert Anderson, deceased, contracted in like manner with the United States to furnish provisions to the army of the United States in and adjacent to the State of New York. That the said provisions were to consist of rations to be issued to the soldiers, and that the contents of each ration are specified in the said contract. That in addition to the said rations the said contractor did furnish to the United States a large amount of casks and packages, &c., wherein the same were contained, and that the said casks and packages were retained and used by the United States, and never were returned to the said contractor, and that the value of the casks and packages so furnished to and retained by the United States was \$10,921 90, and this claimant therefore asks compensation and indemnity of the United States in the sum of \$10,921 90, together with interest from the date at which the said claim accrued.

(c.) That the terms of the said contract, dated the 25th day of February, 1813, to wit, by the sixth article thereof, the United States undertook and agreed as follows, to wit : "That all losses sustained by the depredations of an enemy or by means of the troops of the United States, in articles intended to compose rations to be issued under this contract being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be

paid for at the contract price of the rations or the component parts, and at an appraised value of the other articles, on the deposition of one or more credible characters, and the certificate of a commissioned officer when the same can be obtained, ascertaining the circumstances of the loss and the amount of the articles for which compensation is claimed." That during the execution of the said contract, casks and packages containing the rations to be issued to the troops were lost or destroyed to the amount in value of \$4,805 86. That \$1,901 12 of the said casks and packages were captured and destroyed by the enemy, and \$2,904 75 of the said casks and packages were lost and destroyed by the troops of the United States in descending the St. Lawrence. That the said casks and packages were property necessarily used in transporting the said provisions, and that the said contractor has never received any compensation for the loss of the same. Wherefore this claimant asks compensation of the United States in the said sum of \$4,805 86, together with interest on the same from the date at which the said claim accrued.

2d. That by the terms of both the above-mentioned contracts, to wit, by the tenth article of the same, the United States undertook and agreed as follows :

"And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors or administrators, be found to be due to them on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid, and that no unreasonable or unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors or administrators." That during the months of July and August, 1814, the said contractor transmitted to Washington his accounts for rations issued under the aforesaid contracts; that by the said accounts he was then largely in advance to the United States, to wit, in a sum exceeding \$200,000. That on the 15th October, 1814, he transmitted to Washington a further account, showing a balance due him by the United States of \$263,004 55½. That during the months of July, August, September and October, the United States refused or neglected to settle the said accounts so transmitted, and that the said delay in settling the accounts of the said contractor was unnecessary and unreasonable. That when the said accounts were finally settled, the balances due to the said contractor as aforesaid were found to be correct, and were paid to an amount exceeding \$200,000. That on the 27th day of October, 1814, the said contractor made two several drafts on James Monroe, the Secretary of War, as by the terms and usage of his contract he was authorized to do, the one for \$150,000 payable at sight, and the other for \$50,000 at fifteen days' date. That the said bills were not honored or paid by the United States as they should have been, but were returned protested for non-payment. That the said Elbert Anderson was thereby subjected to great loss, and that his credit was much impaired, and that he claimed of the United States the usual per centage of damages allowed by the law merchant, and by the practice of the United States in the case of protested bills; and that the United States have refused to allow the same; wherefore the

claimant asks that the said damages be allowed him to the amount of 10 per cent. on the amount of the drafts protested, that is to say, \$20,000, together with interest on the same from the date at which the said claim accrued.

3d. (a.) That by the terms of the said contracts the United States undertook and agreed to pay for the said rations so furnished a certain price in money. That the contractor was compelled to wait ten months from the period at which his accounts were tendered for settlement before payment of the balances due by the said accounts was tendered to him, and that he was then compelled to receive the said payment in treasury notes, at the time of such receipt from 8 to 11 per cent. below par, and that he thereby suffered great loss, to wit, the sum of \$6,237, being 11 per cent. on \$56,700 received in treasury notes on the 5th day of September, 1815, at which date the said notes were 11 per cent. below par, and the sum of \$15,977 20, being the discount at $8\frac{4}{10}\%$ per cent. on \$188,631 71, received in treasury notes on the 16th day of January, 1816. That the said contractor never received any indemnity for the said loss, wherefore this claimant asks compensation of the United States in the sum of \$22,214 20, together with interest on the same from the date at which the said claim accrued.

4th. (a.) That by the terms of the said contract, the said Elbert Anderson, deceased, undertook and agreed to furnish to the troops of the United States whiskey at a certain price, being one of the component parts of the rations to be furnished under the said contract. That Congress on the 24th day of July, 1813, passed a law laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814. That the said law went into operation on the first day of January, 1814, and remained in operation throughout the whole remaining term of the said contract. That in consequence of the passage of the said law, the price of whiskey was enhanced to the amount of twenty cents on the gallon; and that the said enhanced price of whiskey continued from the date of the passage of the said law, to wit, the 24th day of July, 1813, throughout the whole term of the said contract. That from the said 24th day of July, 1813, up to the first day of January, 1814, the day on which the law went into operation, the said contractor furnished under his contract of 25th of February, 1813, 89,193 gallons of whiskey. That owing to the said enhanced price of whiskey, the contractor was compelled to pay \$12,932 99 increased cost of the said whiskey, being $14\frac{1}{2}$ cents a gallon for the amount of whiskey furnished as aforesaid.

(b.) That from the said the first day of January, 1814, up to the termination of his said contract, the said contractor furnished to the United States 226,045 gallons of whiskey; that owing to the price of whiskey enhanced as aforesaid, he was compelled to pay \$32,776 52, the increased cost of the said whiskey being $14\frac{1}{2}$ cents on the gallon for the amount furnished as aforesaid. That the said Elbert Anderson, deceased, claimed that he should be indemnified by the United States for the great loss so entailed upon him by the act of the United States, and that the United States have always refused or neglected so to indemnify him; wherefore this claimant asks compensation and

indemnity of the United States in the sum of \$45,709 51, together with interest on the same from the date at which the said claim accrued.

5th. That by the terms of the said contract, to wit, by the second paragraph of the third article, the United States undertook and agreed as follows: "It is understood that if the contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States." That under the said contract of 25th February, 1813, the said contractor was required to deliver a large amount of provisions at the mouth of the Genesee river. That while the said provisions were being transported in conformity with the said order, the contractor was required by the order of General Hull, the officer in command, to transport the said supplies to Williamsville, on the Niagara frontier. That in conformity with such order, the provisions were delivered at Williamsville, and that the expense of such transportation amounted to \$12,303 37. That in accordance with the undertaking on the part of the United States above referred to, the said contractor claimed that the expense of such transportation should be borne by the United States, and that the United States have refused to allow him the expenses of such transportation; wherefore this claimant asks compensation and indemnity of the United States for the said sum of \$12,303 37, together with interest on the same from the date at which the said claim accrued.

6th. That during the execution of the said contract of the 25th February, 1813, J. Thorne, one of the agents of the said contractor, was compelled, on the requisition of General Dearborn, to receive a large amount of provisions left in deposit by Augustus Porter, a contractor for the subsistence of the army, at the expiration of the contract of the said Porter, and also a large amount of provisions captured from the enemy. That the deposits so received consisted of rations of which the component parts were not in the proportions authorized by the contractor's contract, and that the captured provisions were moreover much damaged. That the receipt of the said provisions subjected the said contractor to a heavy loss, and that they were received by the said James Thorne without the knowledge, assent, or authority of the said contractor, and solely in consequence of the peremptory order of the commanding officer. That the said provisions contained, among other things, \$306,338 flour rations; that the said flour was credited to the said Augustus Porter at five cents a ration, and subsequently charged to the contractor at seven and a half cents a ration. That the said contractor claimed an allowance of three cents a ration for the loss to which he was so subjected, and that the United States have refused to allow the same; wherefore, this claimant asks compensation and indemnity of the United States in the sum of \$9,190 14, being three cents a ration on the said 306,338 rations, together with interest on the same from the date at which the said claim accrued.

7th. And this claimant further shows, that the said Elbert Anderson in conformity with the requisitions of his contract, dated 25th

February, 1813, during the month of September of that year, repaired, attended by a numerous and necessary train of assistants, to the northern frontier, in order to issue from deposits which he had made there, under requisitions from the War Department. That he there presented himself to General Wade Hampton, who stated an intention to supply the troops without resort to the petitioner or respect for his contract. That the said conduct of General Wade Hampton subjected the said contractor to a heavy expenditure as compensation for the assistants who had repaired with him to the northern frontier, and deprived him of the benefit of the issue of said provisions to which he was entitled by the terms of his said contract, and by the agreement supplementary thereto. That the said contractor offered to the War Department evidence of his having sustained, through General Hampton's violation of the said contract, damages exceeding \$20,000. That the Department admitted the infraction, but, instead of examining the evidence, undertook and agreed to allow the said contractor as the measure of his damages $12\frac{1}{2}$ per cent. on the amount of the deposits, the per centage allowed him by the third article of the agreement supplementary to his contract as wastage and leakage, and the one cent. per ration for issue, to which the fifth article of that agreement entitled him. That the contractor assented to this agreement, though aware that the damages so awarded would not equal the loss he had sustained. That the $12\frac{1}{2}$ per cent. above referred to amounted to \$9,843 75, and that the said sum was allowed him. That the one cent. per ration above referred to amounted to \$4,500, and the said War Department refused to allow the said \$4,500; wherefore this claimant asks compensation and indemnity of the United States in the said sum of \$4,500, together with interest from the date at which the said claim accrued.

8th. That under the said contract of 25th February, 1813, the said Elbert Anderson, deceased, received a large quantity of provisions from the stores which had been accumulated in the neighborhood of Sackett's Harbor, for the purpose of providing the troops with provisions during their descent down the St. Lawrence. That by the third and fifth articles of the agreement supplementary to the said contract, the said contractor was entitled to $12\frac{1}{2}$ per cent. leakage and wastage on the gross amount of deposits thus received, and one cent per ration for the expense and trouble of issuing the same. That the gross amount of perquisites on the provisions received during the descent of the St. Lawrence was \$10,273 40. That a large portion of the provisions during the said descent of the St. Lawrence were lost or destroyed, for which the said contractor received compensation. That the perquisites on the provisions so destroyed amounted to \$4,523 71.

That after deducting the said \$4,523 71 from the \$10,273 40, there still remained due the sum of \$5,749 69 as perquisites on provisions actually received by the said contractor, and by his agent issued to the troops. That the said contractor claimed the allowance of the \$5,749 69, but that the United States refused to allow the same; wherefore this claimant asks compensation and indemnity of the United States in the said sum of \$5,749 69, together with interest on the same from the date at which the said claim became due.

And this claimant further shows, that the various claims herein enumerated amount in the aggregate to the sum of \$149,366 97 ; wherefore this claimant asks compensation and indemnity of the United States in the said sum of \$149,366 97, together with interest from the date whereon each claim accrued, and this claimant prays leave to refer to the documents hereafter to be submitted, for a more detailed statement of the facts and merits of each individual claim.

HENRY JAS. ANDERSON,
Administrator of Elbert Anderson, deceased.

CITY AND COUNTY OF NEW YORK, ss :

Henry Jas. Anderson, the above named claimant, being duly sworn, says : That he has heard read the foregoing petition, and that the facts therein stated are true, to the best of his knowledge, information, and belief.

HENRY JAS. ANDERSON.

Sworn before me this 22d day of May, 1855.

WM. MITCHELL,
Justice Supreme Court.

MAY 23, 1855.

CHAS. P. DALY,
Judge of the New York Common Pleas.

STATE OF NEW YORK, *City and county of New York*, ss :

I Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that William Mitchell, before whom the annexed deposition was taken, was, at the time of taking the same, a justice of the supreme court for the said city and county, duly elected and sworn, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 23d day of May, 1855.

RICHARD B. CONNOLLY, *Clerk.*

[Seal of court
and county.]

STATE OF NEW YORK, *city and county of New York*, ss :

I Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, do hereby certify that Chas. P. Daly, before whom the annexed deposition was taken, was, at the time of taking the same, judge of the court of common pleas for said city and county, duly elected and sworn, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county, the 23d day of May, 1855.

RICH. B. CONNOLLY, *Clerk.*

[Seal of court
and county.]

A.

Contract dated 7th November, 1811, to take effect on the 1st day of June, 1812, and terminate on the 31st day of May, 1813; and supplementary agreement for the issue of rations from deposits made under this contract.

ARTICLES OF AGREEMENT made on the 7th day of November, anno Domini one thousand eight hundred and eleven, between William Eustis, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, junior, of the city of New York, of the other part.

This agreement witnesseth, That the said William Eustis, for and on behalf of the United States of America, and the said Elbert Anderson, junior, his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other as follows, viz :

First. That the said Elbert Anderson, junior, his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched or recruited, within the limits of the State of New York (Niagara and its dependencies excepted) and the State of New Jersey, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and twelve, until the thirty-first day of May, eighteen hundred and thirteen, at the following prices : that is to say, at any place where rations shall be issued within the city and harbor of New York, for thirteen cents five mills per ration ; within all other parts of the State of New York, at fourteen cents per ration, and within the State of New Jersey, for fifteen cents five mills per ration. Where the price of the ration is thirteen cents five mills, the component parts thereof shall be, for meat five cents, bread or flour four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fourteen cents, the component parts thereof shall be, for meat five cents five mills, flour or bread four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fifteen cents five mills, the component parts shall be, for meat six cents, flour or bread five cents five mills, liquor three cents, small parts one cent. The prices of the component parts of the small parts of the ration shall be eighteen cents per pound for candles, twelve cents five mills per pound for soap, four cents five mills per quart for vinegar, and two cents five mills per quart for salt.

Second. That the ration to be furnished and delivered by virtue of this contract shall consist of the following articles, viz: one pound and a quarter of beef, or three-quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey, or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every one hundred rations.

It is understood that it shall be in the option of the general, or officer

commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued, by general orders to be promulgated a reasonable time before the issue is to commence; that, in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, jr., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the States of New York and New Jersey aforesaid, upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration. And the said Elbert Anderson, junior, when required by the Secretary of War, shall, instead of the ardent spirits mentioned, furnish to the troops of the United States, stationed in the harbor of New York, an equivalent in good malt liquor or light wines, at such season of the year as, in the opinion of the President of the United States, may be necessary for the preservation of their health.

It is understood that if the contractors shall be required to deposit provisions at one place or post, and shall afterwards be required to move them, to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever, and as often as the provisions stipulated to be furnished under this contract shall, in the opinion of the commanding officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, or his agent, and in case of disagreement a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, junior, or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions, under oath, with power to condemn as aforesaid; and all provisions condemned by such survey may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jr., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy,

or by means of the troops of the United States, in articles intended to compose rations to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards, for the safety of the provisions and for the protecting of the cattle against an enemy, shall be furnished whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service; and that the said Elbert Anderson, jr., his heirs, executors, or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper storehouses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time, at such posts respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jr., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, his heirs, executors, or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the States above mentioned may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jr., his heirs, executors, or administrators, in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum, from the time of such expiration, until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors or administrators, be found to be due to him or them on account of the rations which shall be supplied, pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors, or administrators. Provided, however, that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefits to arise therefrom.

In witness whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and the said Elbert Anderson, junior, hath hereto set his hand and seal the day and year first above written.

W. EUSTIS.

[SEAL U. S.]

ELBERT ANDERSON, JR.

[L. S. E. A.]

Signed, sealed, and delivered in the presence of—

DANIEL PARKER,

JOHN J. ABERT.

A true copy from the original.

Whereas by a certain agreement made on the seventh day of November, 1811, between W. Eustis, Secretary of War, and Elbert Anderson, jr., of the State of New York, it was stipulated that the deposits of three, &c., months' supplies of rations may be required. Now therefore it is agreed, by the order of the said W. Eustis to Major General H. Dearborn, that when issues are required from the public deposits, that he might call on the said Elbert for that purpose.

First. That an inventory shall be taken as soon as possible, which shall compromise all such supplies as shall have been actually delivered on or before the last of May, 1813, next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post and the party of the second part of this agreement or his agent, and duplicate receipts given therefor by the said party of the second part or his agent, expressing the quantity and quality of each article or delivery to be made by the public storekeepers or other agents who have charge of the deposits.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for as in the preceding article, he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies as aforesaid to the troops at the several posts, in rations to consist as follows, viz :

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy, or whiskey.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every hundred rations.

Fifth. That the said party of the first part shall pay, or cause to be paid, to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

In witness whereof, the said H. Dearborn, in behalf of the Secretary

of War on behalf of the United States, hath hereunto subscribed his name and affixed his seal ; and the said Elbert hath hereunto set his hand and seal, the day and year last above written.

H. DEARBORN,
ELBERT ANDERSON.

[L. S. H. D.]
[L. S. E. A.]

Signed, sealed, and delivered in the presence of—

A true copy from the original.

B.

Contract dated 25th February, 1813, to take effect on the 1st day of June, 1813, and terminate on the 31st day of May, 1814 ; and supplementary agreement for the issue of rations from deposits made under this contract.

ARTICLES OF AGREEMENT made on the twenty-fifth day of February, anno Domini one thousand eight hundred and thirteen, between John Armstrong, Secretary for the Department of War of the United States of America, of one part, and Elbert Anderson, junior, of the city of New York, of the other part.

This agreement witnesseth, That the said John Armstrong, for and on behalf of the United States of America, and the said Elbert Anderson, jun., his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz :

First. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York, and the western and northern vicinity, within the Canadas, thirty days' notice being given of the post or place where rations may be wanted, the number of troops to be furnished on their march, from the first day of June, eighteen hundred and thirteen, to the thirty-first day of May, eighteen hundred and fourteen, both days inclusive, at the following prices ; that is to say, at any place where rations shall be issued, within the city and harbor of New York, and at the encampment of Greenbush, at fourteen cents eight mills the ration. At all other places within the State of New York and the Canadas, at seventeen cents five mills per ration ; provided, however, that for all rations required within the enemy's territory, the price of the ration shall be augmented in proportion to the expense of transportation and issue in the enemy's country, the supplies having been delivered on account of government at magazines designated for that purpose within the State of New York ; and when it may become necessary, the public agents, boats and teams shall be employed in transporting from such depots by order of the commanding general, on representation of the contractor or his proper agent, that such transportation cannot be furnished independently of the army assistance : Provided, also, that the contractor shall at all times have

reasonable notice when and where deposits are to be made for transportation into the enemy's country, as well as the amount required for that purpose. Where the price of the ration is fourteen cents eight mills, the prices of the component parts of the same shall be, for meat, five cents five mills ; for bread or flour, four cents eight mills ; liquor, three cents five mills ; small parts one cent. Where the price of the ration is seventeen cents five mills, the prices of the component parts of the same shall be, for meat, five cents five mills ; bread or flour, seven cents five mills ; liquor, three cents five mills ; small parts one cent. The prices of the component parts of the small parts of the ration shall be, eighteen cents per pound for candles ; twelve cents five mills per pound for soap ; four cents five mills per quart for vinegar ; and two cents five mills per quart for salt : Provided, also, that the thirty days' notice required to be given by the government of the post or place where rations may be wanted, shall be understood to apply when the ration shall be taken from any deposit previously made on account of the government.

Second. That the ration to be furnished and delivered by virtue of this contract shall consist of the following articles, viz : one pound and a quarter of beef, or three quarters of a pound of pork ; eighteen ounces of bread, or flour ; one gill of rum, whiskey, or brandy ; and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every one hundred rations.

It is understood that it shall be in the option of the general or officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence ; that in all cases where salted provisions are issued, the articles of salt shall not be required ; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, jr., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the limits aforesaid, upon the requisition of the commandant of the army, or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration.

It is understood that if the contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them, to be delivered at any other place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever and as often as the provisions stipulated to be furnished under this contract shall, in the opinion of the commanding officer of the post or place where they are offered, to

be issued be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon by two disinterested persons, one to be chosen by the commanding officer and the other by the said Elbert Anderson, jun., or his agent, and in case of disagreement, a third person to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, jun., or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions under oath, with power to condemn as aforesaid. And all provisions condemned by such survey or inspection may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jun., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished, whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service; and that the said Elbert Anderson, jun., his heirs, executors, or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper storehouses shall be provided on behalf of the public for the reception and safe-keeping of the provisions deposited from time to time at such posts, respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War for settlement at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, jun., his executors or administrators, for and on account of the supplies to be furnished pursuant to this contract,

and all such sums of money as the commanding officer of the troops or recruits that are or may be within the limits aforesaid may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jun., his heirs, executors, or administrators, in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum from the time of such expiration, until the same shall be actually repaid. And that, if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators, be found to be due to him or them, for or on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States shall be given to the settlement of the accounts of said Elbert Anderson, jun., his heirs, executors, or administrators. Provided, however, that no member of Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

In witness whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and [Seal of the War Office.] the said Elbert Anderson hath hereto set his hand and seal, the day and year first above written.

JOHN ARMSTRONG.
ELBERT ANDERSON, JUN.

Signed, sealed, and delivered in the presence of—

DANIEL PARKER.
GEORGE BOYD.

Whereas by a certain agreement made on the twenty-fifth day of February, eighteen hundred and thirteen, between John Armstrong, Secretary of War, and Elbert Anderson, jun., of the State of New York, it is stipulated that magazines of provisions may be required of the said Anderson, for the armies and troops of the United States: Now, therefore, it is agreed between the said John Armstrong and Elbert Anderson, junior:

First. That whenever deposits are ordered and have been made accordingly, an inspection shall be had, and an inventory shall be taken as soon as practicable, which shall comprise all such supplies as shall have been actually deposited for the United States by virtue of the said agreement, and a certificate of such inspection and inventory furnished to the said Elbert Anderson, jun., or his agent.

Second. That when issues are to be made from said deposits, the said Anderson, or his agent, shall be called on for that purpose, and duplicate receipts given therefor by the said party of the second part or his agent, expressing the quantity and quality of each article.

Third. That the party of the second part shall account to the

United States for all the supplies which shall be receipted for, as in the preceding article ; he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all supplies as aforesaid to the troops at the several posts, in rations to consist as follows, viz :

Eighteen ounces of bread or flour ; one pound and a quarter of beef, or three-quarters of a pound of pork ; one gill of rum, brandy, or whisky ; and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles, to every hundred rations.

Fifth. That the said party of the first part shall pay, or cause to be paid, to the said party of the second part, one cent of every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same, the transportation being furnished by the government when the same may become necessary, and always at the public expense within the enemy's country.

In witness whereof, the said Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and
[Seal of the War Office.] affixed the seal of the War Office of the United States ; and the said Elbert Anderson hath hereunto set his hand and seal, the day and year last above written.

JOHN ARMSTRONG.

ELBERT ANDERSON, JUN.

Signed, sealed, and delivered in the presence of—

DANIEL PARKER.

GEORGE BOYD.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES.

STATE OF NEW YORK, *City and county of New York*, ss :

On the twenty-sixth of September, the third, ninth, sixteenth, twenty-ninth, and thirtieth of October, the seventh and twenty-seventh of November, A. D. 1856, the thirteenth, fourteenth, seventeenth, and twentieth of January, A. D. 1857, personally came Robert M. Penoyer, David H. Nevins, Hugh McGinnis, Joseph H. Choate, Jacob Barker, Roderick Sedgwick, James W. Bleecker, Reuben W. Folger, Henry James Anderson, Elbert Ellery Anderson, Francis Denham, Thomas Lord, Elbert J. Anderson, and John W. Martin, respectively, the several witnesses within named, and after having been respectively first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within depositions respectively were written down by the commissioner, and then proposed by him to the witnesses respectively at the several dates therein respectively stated, and the answers thereto

were written down by the commissioner in the presence of the witnesses respectively who subscribed the depositions respectively in the presence of the commissioner, on the dates therein respectively stated. The depositions of Robert M. Penoyer, David H. Nevins, Hugh McGinnis, Joseph H. Choate, Jacob Barker, Roderick Sedgwick, James W. Bleecker, Reuben W. Folger, Henry James Anderson, Elbert Ellery Anderson, Francis Denham, Thomas Lord, Elbert J. Anderson, and John W. Martin, taken at the request of the said Ellery Anderson, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Henry James Anderson, administrator of the estate of Elbert Anderson, deceased. The solicitor for the United States signed the annexed consent, did not attend, but furnished cross-interrogatories, as stated in the depositions respectively. No objections were made.

G. R. J. BOWDOIN,

Commissioner.

NEW YORK, *January 31, 1857.*

Commissioner's fees—per day.

195 days, at 20 cents.....	\$39 00
23 days' allowance, at \$5.....	115 00
	<hr/>
	150 00
	<hr/>

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

I hereby consent that the claimant may proceed before George R. J. Bowdoin, one of the commissioners of this court, with the examination of witnesses, subject to my right to propound cross-interrogatories within a reasonable time.

M. BLAIR,

United States Solicitor.

WASHINGTON, *September 1, 1856.*

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Robert M. Penoyer, a witness produced on the part of the above-named claimant in the above-entitled action, this twenty-sixth day of September, eighteen hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this cause? Are you related to the claimant, and if yea, in what degree?

Answer. My name is Robert M. Penoyer; I am a flour dealer, and

am seventy years of age ; have resided in New York city for the past year ; I have no interest, direct or indirect, in the claim which is the subject of inquiry in this cause, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Were you acquainted with Elbert Anderson, deceased, of New York city ?

Answer. Yes, sir.

Third interrogatory. What was his occupation from eighteen hundred and eleven to eighteen hundred and fifteen ?

Answer. He was an army contractor, issuing provisions to the United States troops.

Fourth interrogatory. What was the nature of your connexion with him during that period or any part of it ?

Answer. I kept the accounts under him, commencing in the year 1813 ; I mean the regular abstracts that came into the office from the points or posts where the provisions were issued to the troops ; also the abstracts of provisions deposited and received out of deposit.

Fifth interrogatory. In whose handwriting are the books now exhibited to you, and marked respectively No. 1 and No. 2 ?

Answer. Exhibit No. 1 is in my handwriting, with the exception of pages numbered 151, 152, and 154, respectively. Exhibit No. 2 is in my handwriting, except page numbered 63.

Sixth interrogatory. What do these two exhibits contain ?

Answer. They contain copies of abstracts sent on to Washington ; these abstracts are the abstracts referred to in my answer to the fourth interrogatory.

Seventh interrogatory. What is the account set forth on page 58, (fifty-eight,) in exhibit No. 2 ?

Answer. It is a copy of the account current between Elbert Anderson, deceased, and the United States ; it is brought down to October 15, 1814.

Eighth interrogatory. Do the first four items debited to the United States consist of accounts of issues made under the contract, dated the 25th of February, 1813, and set forth at length, commencing at page number 66 (sixty-six) of exhibit No. 1 and ending on page numbered 120 (one hundred and twenty) of same exhibit ?

Answer. Yes, sir.

Ninth interrogatory. Does the fifth item in said account current debited to the United States consist of accounts set forth at pages numbered 121, 122, and 123 of exhibit No. 1, and pages numbered 54 to 57, both inclusive, of exhibit No. 2 ?

Answer. Yes, sir.

Tenth interrogatory. Does the sixth item in said account current consist of accounts of deposit, set forth at pages 139 and 140, 141 and 142 of exhibit number 1 ?

Answer. Yes, sir.

Eleventh interrogatory. Do the four credits made to the United States in the said account current, for provisions received out of deposit, appear set forth at length on pages 143 to 148, both inclusive, of exhibit No. 1 ?

Answer. Yes, sir.

The further examination of this witness was adjourned to September 29, at four o'clock p. m.

September 29. The further examination of this witness was resumed.

Twelfth interrogatory. Do the abstracts exhibited at pages 127, 128, and 129 of exhibit No. 1, and the abstract at page 136 of same exhibit, referring to the contract of the 7th of November, 1811, show respectively the amounts of provisions deposited and received out of deposit under the said contract?

Answer. Yes, sir.

Thirteenth interrogatory. Is the computation made at pages 86 and 87 of exhibit No. 2, whereby it appears that the value of the casks and packages containing provisions deposited, furnished to the United States, was forty-six thousand five hundred and eighty-four dollars and twenty-one cents, and that the value of the casks and packages was twenty-one thousand six hundred and ninety dollars and one cent, and that a balance of casks and packages of the value of twenty-four thousand eight hundred and ninety-four dollars and twenty cents was furnished to the United States and not received back, a computation based upon the abstracts above referred to, and set forth at pages 127, 128, 129, 139, 140, 141, 142, 136, and 143 to 148, both inclusive, of exhibit No. 1?

Answer. Yes, sir.

Fourteenth interrogatory. Are the said casks and packages charged and credited at the following rates: meat barrels, one dollar; liquor casks from one dollar and fifty cents to three dollars; flour barrels, thirty-eight cents; boxes, twenty-five cents?

Answer. The meat barrels are charged and credited at one dollar; the whiskey barrels at one dollar; liquor casks at three dollars; these casks vary in price according to size; the flour barrels at thirty-eight cents; boxes at twenty-five cents.

Fifteenth interrogatory. What is the paper now shown you, marked "Exhibit No. 3," in whose handwriting is the same, and what account does it refer to?

Answer. It is an account made out by John Abbott, an accountant in the War Department, at Washington, showing the differences under the contract of the 25th of February, 1813; it is in Mr. Abbott's handwriting, and refers to the account current on page 58, of exhibit No. 2.

Sixteenth interrogatory. Does it appear from "Exhibit No. 3," that any portion, and if any what, of the abstracts of provisions deposited and received out of deposit were disallowed by the accounting officer at Washington?

Answer. I do not see that it does, so far as I am able to judge, except the separate charge of casks and packages.

The further examination of this witness was adjourned to October, 1, at half past three o'clock, p. m.

October 1. The further examination of this witness was resumed.

Seventeenth interrogatory. Have you since the sixteenth interrogatory was answered by you, made any further examination of the statement of differences, marked "Exhibit No. 3," so as to enable you to

answer the said interrogatory more definitely, and if yea, answer the sixteenth interrogatory again?

Answer. I have since then examined "Exhibit No. 3," more carefully, and I do not find that it disallows any of the abstracts of provisions deposited or received out of deposit.

Eighteenth interrogatory. What was the practice of Elbert Anderson, deceased, under his contract of 25th February, 1813, with reference to drafts drawn on the Secretary of War in payment of sums accruing to him under the said contract?

Answer. He used to draw thirty days after the abstracts were forwarded for the amounts appearing to be due, or predicated on such amounts, but sometimes at a shorter and sometimes at a longer period.

Nineteenth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No, sir.

R. M. PENOYER.

Subscribed in my presence, October 1, 1856.

G. R. J. BOWDOIN,
Commissioner.

The examination of this witness was resumed this 26th day of November, 1856.

Twentieth interrogatory. Do you recognize the book now shown you marked "Exhibit No. 5," and of what does the same consist?

Answer. I do recognize it; it is the letter-book containing the letters of Elbert Anderson, relating to his contracts with the United States, most of which are in my handwriting, from page 184 to page 296, both inclusive, are entirely in my handwriting except page 223 and 224.

Twenty-first interrogatory. Do you know anything about two drafts mentioned in said "Exhibit No. 5," at page 288.

Answer. Yes, I know that the drafts referred to on that page were drawn, and that both of them were returned protested for non-acceptance; they were drawn and returned as mentioned on that page.

Twenty-second interrogatory. What was your custom with reference to entering on the copies of abstracts retained by Elbert Anderson, the dates at which the originals were forwarded to Washington?

Answer. It was generally my custom to note on the copies of such abstracts retained by Elbert Anderson the dates at which the originals were forwarded to the accountant's office at Washington.

Twenty-third interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. None that I recollect at present.

R. M. PENOYER.

Subscribed in my presence, November 26, 1856.

G. R. J. BOWDOIN,
Commissioner.

On cross-examination the said Robert M. Penoyer testified as follows:

First cross-interrogatory. What was the value of the casks spoken of in your testimony in chief at the places at which they were emptied? State your means of knowledge on the subject.

Answer. I do not know the value of the casks.

Second cross-interrogatory. If you mean in answer to the thirteenth interrogatory to say that casks of the value of twenty-one thousand six hundred and ninety dollars and one cent were returned to Anderson by the United States, state where, and what places.

Answer. I do not mean to say ; my answer to that interrogatory is only that certain computations were based upon certain abstracts.

Third cross-interrogatory. In answer to the eighteenth interrogatory you say it was the practice of Mr. Anderson to draw on the department after furnishing his abstracts ; were his drafts accepted when not specially authorized ?

Answer. All the drafts drawn by Mr. Anderson were accepted by the department, with two exceptions ; I do not know of any instance in which a special authority to draw was given. The drafts which Mr. Anderson drew are posted in the accounts current, which are contained in the abstract books, marked "Exhibits, Nos. 1 and 2."

Fourth cross-interrogatory. Do you know of any other matter relative to the claim in question ? If yea, state it.

Answer. I do not at present recollect anything.

R. M. PENOYER.

Subscribed in my presence January 13, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator &c., of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES.

Deposition of David H. Nevins, a witness produced on the part of the above named claimant, in the above entitled action, this third day of October, eighteen hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year ? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action ? Are you related to the claimant, and if yea, in what degree ?

Answer. My name is David H. Nevins ; I have no business at present ; I am forty-five years of age, and have resided for the past year in the city of New York ; I have no interest, direct or indirect, in the claim which is the subject of inquiry in this action ; and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Do you know of a firm known by the name of Butler & Nevins ?

Answer. I know there was such a firm from conversation with Russell H. Nevins, now deceased, who told me that he was a member of that firm ; I think the other partner was Benjamin Butler, and I feel confident that he has been dead for several years ; I do not think there were any other partners ; I never heard of any ; their business was that of brokers ; they were in business, as I have been informed, and

believe, in the years 1814, 1815, and 1816. Russell H. Nevins was my uncle.

Third interrogatory. Have you in your possession any of the books of account or of the correspondence of the said late firm of Butler & Nevins?

Answer. I have brought with me two books, which were letter-books of Butler & Nevins, and Russell H. Nevins; these books contain letters to correspondents, giving, among other things, quotations of stocks, treasury notes, exchange, and specie.

Fourth interrogatory. Will you consent that the said letter-books be transmitted to Washington as "Exhibits," in this action?

Answer. No, sir.

Fifth interrogatory. What appears in the said letter-book marked No. 1, under the dates of August 31, 1815, September 9, 1815, September 13, 1815, September 15, 1815, and September 21, 1815, to be the quotations of seven per cent. treasury notes, and of dollars, and gold, at those dates respectively?

Answer. On the 31st of August, 1815, the notes are quoted $1\frac{1}{4}$ (one and a quarter) premium; dollars, nine to ten premium; gold, ten to eleven premium; on the 9th of September, the notes are quoted at between one and one and three quarters premium; dollars and gold from twelve to thirteen premium; on the 15th of September, the notes are quoted at three to three and a quarter premium; dollars and gold from fourteen to fifteen premium; on the 21st of September, the notes are quoted at from two and three quarters to three premium; dollars, fourteen premium; gold not quoted, except doubloons, which are quoted as being of the value of eighteen dollars each.

Sixth interrogatory. What appears in the said letter-book marked No. 2, under the dates of January 2, 1816, January 4, 1816, January 6, 1816, January 9, 1816, January 16, 1816, January 23, 1816, and January 24, 1816, to be the quotations of treasury notes, and of dollars, and gold, at those dates respectively?

Answer. Under date of January second, the seven per cent. treasury notes are quoted at par; gold, nine to ten premium; dollars, not quoted. Under date of January fourth, specie is quoted at eight to ten premium; treasury notes (rates of interest not mentioned) are quoted at one to two per cent. discount. Under date of January sixth, seven per cent. treasury notes are quoted at one to one and a quarter discount; dollars and gold not quoted, except doubloons, for which seventeen dollars and fifty cents are asked. Under date of January ninth, treasury notes (rate of interest not mentioned) are quoted at one per cent. discount; Spanish dollars, eight to nine premium; gold, eight to eight and a half premium. Under date of January sixteenth, treasury notes (rate of interest not mentioned) are quoted at one to one and a quarter discount; dollars and gold, at eight to nine premium. Under date of January twenty-third, treasury notes (rate of interest not mentioned) are quoted at one to one and a half discount; dollars, nine to nine and one-half premium; gold, not quoted. Under date of January twenty-fourth, gold is quoted at eight and one-half to nine premium. The letter of the second January, 1816, is dated second January, 1815, but was evi-

dently intended for 1816, the letters immediately following it being dated in 1816, and it is found in its regular order in the book.

Seventh interrogatory. Look at exhibit No. 4, now produced to you, and state whether or not you are acquainted with either of the signatures therto, and if yea, which and in whose handwriting is such signature?

Answer. I am acquainted with the signature, Nevins & Townsend, that is in the handwriting of Russell H. Nevins, who was at that time a member of the firm of Nevins & Townsend, brokers in the city of New York.

Eighth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No, sir.

DAVID H. NEVINS.

Subscribed in my presence, October 3, 1856.

G. R. J. BOWDOIN,
Commissioner.

NEW YORK, *January 2, 1815.*

* * * * *

Drafts on Boston, 9 per cent. ; Philadelphia, $4\frac{1}{2}$ a 5 ; Baltimore, 8 a 9, 6 per cents. $92\frac{1}{4}$, 7 per cent. treasury notes par, none for sale ; gold, 9 a 10 ; doubloons, 17 a 18 ; 7 per cent. stock, par ; bills on London, 8 a $8\frac{1}{2}$.

B. & N.

Messrs. BRIDGE & RENOUF.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

I certify that the above is an exact extract from a letter contained in the letter-book of Butler & Nevins, identified as being such book by the testimony of David H. Nevins, heretofore taken in this action; and I further certify that said letter is written in said book after letters dated in December, 1815, and among letters dated in January, 1816, and from its position among said letters, it is my opinion that it should have been dated in 1816.

G. R. J. BOWDOIN,
Commissioner.

Dated New York, November 28, 1856.

NEW YORK, *August, 31, 1814.*

GENTS: Your letter by Captain Thomas, is received enclosing bills..... 2,600 00
Discount on \$5 Hudson 10
H. Cassell's note 5.. 5 00

\$2,594 90

H. Cassell's note 5 ds. we shall credit you when sold. The banks in Philadelphia all stopped paying specie on the 29th instant, and all our banks to-day; our apprehensions have been realized to the full. We do not think the effects of this measure, however, will be so serious as many apprehend.

B. & N.

Messrs. G. & DEAN.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

I hereby certify that the above is an exact copy of a letter contained in the letter book of Butler & Nevins, identified as being such book by the testimony of David H. Nevins, heretofore taken in this action.

G. R. J. BOWDOIN,
Commissioner.

Dated New York, November 28, 1856.

NEW YORK, *August 31, 1815.*

DEAR SIR: * * * * * * *

Specie and drafts on Boston are very regular, and appear to settle down at the prices below:

The \$171 Philadelphia is forwarded to Messrs. S. and J. Nevins as you requested.

B. & N.

T. B. WOOD.

Six per cent., 95; 5 $\frac{3}{8}$ Treasury notes, 98 $\frac{1}{2}$, 98 $\frac{3}{4}$; post notes, 98; 7 per cent. 101 $\frac{1}{4}$; Philadelphia, 95 a 96 $\frac{1}{2}$; Baltimore and Washington, 92 $\frac{1}{2}$; Virginia, 93 $\frac{1}{2}$ a 94 $\frac{1}{2}$; North Carolina, 95 a 96; South Carolina, 98; Boston, on sight, 111; dollars, 109 a 110; change, 108 a 109 a 110; gold, 110 a 111.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* the UNITED STATES OF AMERICA.

I hereby certify that the above is an exact extract from a letter contained in the letter book of Butler & Nevins, identified as being such letter-book by the testimony of David H. Nevins heretofore taken in this action.

G. R. J. BOWDOIN,
Commissioner

Dated NEW YORK, *November 20, 1856.*

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator, &c., of ALBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Joseph H. Choate, a witness produced on the part of the above-named claimant in the above entitled action, this sixteenth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and what has been your place of residence for the past year; have you any interest direct or indirect in the claim which is the subject of inquiry in this action? are you related to the claimant, and if yea, n what degree?

Answer. My name is Joseph H. Choate; I am twenty-four years of age; I am a lawyer, and have resided in New York city for the past year; I have no interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant, or the intestate whom he represents.

Second interrogatory. Are you familiar with the general principles of such accounts as those which are contained in exhibit Nos. 1 and 2, now shown to you, and have you examined the said exhibits?

Answer. I am somewhat familiar with the general principles of such accounts, and have examined said exhibits, and understand the principles upon which they are constructed.

The further examination of this witness was adjourned to October 17, 1856, at half past nine a. m.

October 17, 1856. The further examination of this witness was resumed pursuant to adjournment.

Third interrogatory. What are the prices at which the casks and packages are charged throughout the accounts? What is the value of the casks and packages which it appears from the said accounts were placed in deposit, under the contract of seventh of November, eighteen hundred and eleven? What is the value of such casks and packages received out of deposit under the said contract? What is the value of the casks and packages, which it appears from the said accounts, were placed in deposit under the contract of the twenty-fifth of February, eighteen hundred and thirteen, and what is the value of the casks and packages received out of deposit under said last mentioned contract.

Answer. Meat barrels are charged at one dollar; flour barrels at thirty-eight cents; liquor casks vary from one dollar and a half to three dollars; but as I have generally found them valued at three dollars, I have estimated them at that valuation when their value is not fixed in the accounts; all the boxes at twenty-five cents, and vinegar casks at two dollars and one-half. The value of the casks and packages which it appears from said accounts were placed in deposit, under the contract of the seventh November, estimated at the above prices, is twenty-one thousand three hundred and forty-eight dollars and seventy-one cents, and the value of the casks and packages received out of deposit under said contract, estimated at the same prices,

is six thousand eight hundred and eight dollars and fifty-four cents. The value of the casks and packages which it appears from said accounts were placed in deposit under the contract of the twenty-fifth of February, estimated at the same prices, is twenty-five thousand and ninety dollars and sixty-nine cents, and the value of the casks and packages received out of deposit under said last mentioned contract, estimated at the same prices, is sixteen thousand and eighty-five dollars and seventy-eight cents. If all the casks received out of deposit under this contract are estimated at one dollar and a half, the total value of casks and packages received out of deposit would be fourteen thousand one hundred and ninety-eight dollars and twenty-eight cents.

Fourth interrogatory. Have you computed the number of gallons which it appears from the said accounts were issued to the troops after the month of July, eighteen hundred and thirteen? and if yea, what is the said number of gallons?

Answer. I have computed it, and the number issued subsequent to July, eighteen hundred and thirteen to the end of that year, is eighty-seven thousand three hundred and ninety-five gallons, and in the year eighteen hundred and fourteen the said number is two hundred and twenty thousand nine hundred and ninety-eight gallons; some of the items included in the issues of eighteen hundred and thirteen were in part issued in eighteen hundred and fourteen, and cannot be distinguished in the accounts, but the issues of eighteen hundred and fourteen are all confined to that year. In making this computation I have rejected all the items which appear by exhibit No. 3 to have been disallowed by the accounting officer, and have made proper deductions for all items which he has disallowed in part. If the items of captured provisions, which appear by exhibit No. 3 to have been suspended to await depositions, were inserted in the above computation, the number of gallons issued as above in eighteen hundred and thirteen, would be eighty-nine thousand seven hundred and ninety-eight, and in eighteen hundred and fourteen, the number of gallons issued would be two hundred and twenty-three thousand and eighty-six.

Fifth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. Not to my present recollection.

J. H. CHOATE.

Subscribed in my presence, October 17, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator, &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES.

Deposition of Jacob Barker, a witness produced on the part of the above named claimant, in the above entitled action, this sixteenth day of October, one thousand eight hundred and fifty-six, at the city of New York:

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest direct or indirect in the claim which is the subject of inquiry in this action? Are you related to the claimant? and if yea, in what degree?

Answer. My name is Jacob Barker; I am a banker, and an attorney at law; I have been a banker since the year eighteen hundred and sixteen, but have been familiar with stocks and banking business since the year eighteen hundred, and particularly so since the year eighteen hundred and twelve; I am in my seventy-seventh year; my place of residence for the past year has been in the city of New Orleans, but from the year seventeen hundred and ninety-seven to the year eighteen hundred and thirty-four, I resided in the city of New York; since then the State of Louisiana has been my place of residence; I have no interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Were you acquainted with the firm of Butler & Nevins in the years 1814, 1815 and 1816? if yea, what was their business?

Answer. I was acquainted with that firm; their business was that of money, stock, and note brokers, and dealers therein on their own account.

Third interrogatory. What was their reputation and standing as such brokers at that time?

Answer. Very respectable.

Fourth interrogatory. Will you explain the meaning of the quotations of stocks, treasury notes, specie, and other securities, contained in the letter book of the said firm of Butler & Nevins, marked No. 1, D. H. N., now shown to you, under the dates of August 31, 1815, September 9, 13, 15, and 23, 1815; also of the said quotations in the letter book of said firm, marked No. 2, D. H. N., now shown to you, under the dates of January 2, 4, 6, 9, 16, 23, and 24, 1846?

Answer. Under the date of August 31, 1815, silver dollars commanded one hundred and nine to one hundred and ten, bank notes of the New York banks for the one hundred; in other words, bank notes sold for about nine per cent. discount for the legal currency of the country; treasury notes, interest at seven per cent., sold for one and a quarter premium, payable in New York bank notes; so that at that date such treasury notes according to such quotations, and according to my recollection, would be at a discount of from eight to nine per cent., payable in specie. The face or nominal value of New York bank notes was the basis of all the quotations referred to at the several dates mentioned, and was the general basis of quotation of all financial securities at that period; these banks were then and for a long time afterwards in a state of suspension of specie payments.

Fifth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No, sir.

JACOB BARKER.

Subscribed in my presence October 31, 1856.

G. R. J. BOWDOIN,
Commissioner.

The examination of the said Jacob Barker was resumed this twentieth day of October, eighteen hundred and fifty-six.

Sixth interrogatory. Were you, in the years 1814, 1815, and 1816, acquainted with the firms of Prime, Ward & Sands, and of Nevins & Townsend? and if yea, what was their occupation and their standing and reputation, and do you know the signatures attached to Exhibit No. 4 to be signatures of the said firms respectively?

Answer. I was. Prime, Ward & Sands, and Nevins & Townsend were stock exchange and note brokers; their standing and reputation was highly respectable; I do know the signatures attached to Exhibit No. 4 to be signatures of the said firms respectively.

Seventh interrogatory. Was there any difference, and if any what, in the market value of stock or treasury notes between New York and Washington cities.

Answer. The market value of United States stocks and treasury notes in specie at Washington, D. C., has always been regulated by the price those securities bore in New York, seldom varying more than one-quarter or one-half of one per cent.; the variance in the quotations of the two markets arose from the greater depreciation of the notes of the banks of the District of Columbia than the notes of the New York banks.

Eighth interrogatory. Do you know of any other matter relative to the claim in the above entitled actions?

Answer. No, sir.

JACOB BARKER.

Subscribed in my presence October 31, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, deceased,
against THE UNITED STATES OF AMERICA.

The further deposition of Jacob Barker, a witness produced and sworn in the above entitled action on the part of the claimant.

Ninth interrogatory. Were you acquainted with O. H. Hicks, who resided in the city of New York in the year eighteen hundred and twenty-three? were you acquainted with his handwriting? and if yea, look at Exhibit No. 6, now produced, and state in whose handwriting are the words "O. H. Hicks, commissioner," which are written upon the first page of said exhibit?

Answer. I was acquainted with the said Hicks and with his handwriting, and the words "O. H. Hicks, commissioner," are in his handwriting.

Tenth interrogatory. Were you acquainted with the firm of S. & J. Nevins & Co., who were doing business in Philadelphia in the year eighteen hundred and twenty-five, and were you acquainted with the handwriting and signature of the firm? and if yea, look at the exhibit now produced to you marked No. 7, and state in whose hand-

writing is the signature "S. & J. Nevins & Co.," on the first page of said exhibit?

Answer. I was acquainted with said firm, but did not know their handwriting, they were respectable money dealers at the time

Eleventh interrogatory. Have you any recollection of the prices of specie, Treasury notes, and bills of exchange or drafts at the times respectively referred to in said exhibits? and if yea, state whether or not the prices as stated in said exhibits are correctly given?

Answer. I had an intimate acquaintance with such prices at those times, and the prices respectively stated in said exhibit correspond with my recollections.

Twelfth interrogatory. Do you know of any other matter relative to the claim in this action?

Answer. I do not recollect anything at present.

JACOB BARKER.

Subscribed in my presence, December 18, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Roderick Sedgwick, a witness produced on the part of the above named claimant, in the above entitled action, this twenty-ninth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? have you any interest direct or indirect in the claim which is the subject of inquiry in this action? are you related to the claimant? and if yea, in what degree?

Answer. My name is Roderick Sedgwick; I am a broker; am about sixty-eight or sixty-nine years of age, and have resided in the city of New York for the past year; I have not any interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. What was your occupation in the years 1813, 1814, 1815 and 1816?

Answer. I was a grocer, and dealt in all sorts of liquors; my place of business was the city of Albany.

Third interrogatory. Were you familiar with the market prices at which domestic liquors, including whiskey, were sold and bought in the years 1813 and 1814? if yea, do you remember any variation in the market price of such liquors which occurred at that period?

Answer. I was familiar with the market prices of such liquors in those years; all liquors at that period of war advanced in price, and more especially domestic whiskey, owing to a duty which the government placed upon stills, as was supposed: from my examination of books of account and my recollection, I can state that domestic whiskey

advanced at that period from fifty and sixty cents a gallon, up to a dollar and a dollar and ten cents.

Fourth interrogatory. Do you know of any other matter relative to the claim in the above entitled action.

Answer. I do not.

R. SEDGWICK.

Subscribed in my presence October 29, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Hugh McGinnis, a witness produced on the part of the above named claimant, in the above entitled action, this twentieth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age and place of residence for the past year? have you any interest direct or indirect in the claim which is the subject of inquiry in this action? are you related to the claimant? and if yea, in what degree?

Answer. My name is Hugh McGinnis; I am a cooper, and was so previous to the war of 1812, and through that war; am seventy years of age, and have resided in the city of Brooklyn for the past year: I have not any interest direct or indirect in the claim which is the subject of inquiry in this action, and am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Were you familiar with the prices at which meat barrels, whiskey casks, vinegar casks, flour barrels, and candle or soap boxes were bought and sold during the years 1813, 1814 and 1815? and if yea, what were such prices respectively?

Answer. I was familiar with the prices of such barrels and casks during those years, but not with the boxes: the price of white oak hogsheads, wooden bound, which were whiskey casks, varied from two dollars and a half to three dollars; these held one hundred and twenty gallons; meat barrels averaged from ten shillings to twelve shillings; vinegar casks about the same price as whiskey casks; flour barrels fifty cents.

Third interrogatory. Do you know of any other matter relative to the claim in the above entitled action.

Answer. No, sir.

HUGH MCGINNIS.

Subscribed in my presence, October, 29, 1856.

G. R. J. BOWDOIN,
Commissioner.

On cross-examination the said Hugh McGinnis, testified as follows:

First cross-interrogatory. Do you know anything of the casks in which the provisions were furnished to the troops during the war by

Anderson? if so, state what they were worth at the several places and at the several times at which they were emptied.

Answer. I do not know anything about those casks.

Second cross-interrogatory. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer. Not that I recollect.

The direct examination being resumed, the witness testified as follows:

Fourth direct-interrogatory. Did the market value of the casks and barrels referred to by you in your examination in chief vary throughout the State of New York? and if so, how much?

Answer. If they varied at all, the variation was very trifling.

Fifth direct-interrogatory. Do you know of any other matter relative to the claim in question? if so, state it.

Answer. I do not.

HUGH MCGINNIS.

Subscribed in my presence January 13, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator &c., of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Francis Denham, a witness produced on the part of the above named claimant, in the above entitled cause, this 13th day of January, 1857, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence, and what has it been for the past year? have you any interest direct or indirect in the claim which is the subject of inquiry in this cause? are you related to the claimant, and if yea, in what degree?

Answer. My name is Francis Denham; I am a cooper; I am about fifty-four years of age; I reside in State street, city of Brooklyn, and have resided there for the last eleven years. I have no interest whatever in the claim which is the subject of this action; I am not in any way related to the claimant or the intestate whom he represents.

Second interrogatory. Do you know what were the prices at which meat barrels, whiskey casks, vinegar casks, flour barrels, and candle or soap boxes, were bought and sold during the years 1813, 1814, and 1815? and if yea, what were such prices, respectively; state the grounds of your knowledge.

Answer. I have no knowledge except from the books of my father, who was a cooper, and whose books I kept. By those books it appears that during the years referred to meat barrels were worth about one dollar and a quarter, whiskey casks of thirty-two gallons, were worth about the same; those of about one hundred and twenty gallons, were worth from three to three and a half dollars. I don't think we had

any vinegar casks, they must have been worth the same as whiskey casks according to their size; flour barrels were worth three shillings, perhaps a little more. I don't know anything about the value of candle or soap boxes.

Third interrogatory. Are those the prices which were charged on your father's books for the articles above referred to, and what has become of those books?

Answer. Those are the prices which were charged for those articles on my father's books; those books were destroyed by fire several years since.

Fourth interrogatory. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer. Not that I recollect at present.

On cross-examination, witness testified as follows:

First cross-interrogatory. Do you know anything of the casks in which the provisions were furnished to the troops, during the war by Anderson? if so, state what they were worth at the several places, and at the several times at which they were emptied.

Answer. I do not know anything about those casks.

Second cross-interrogatory. Do you know of any other matter relative to the claim in question? if yea, state it.

Answer. I do not.

FRANCIS DENHAM.

Subscribed in my presence January 13, 1857.

G. R. J. BOWDOIN.
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, &c., deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of James W. Bleecker, a witness produced on the part of the above named claimants, respectively, in the above entitled actions, this thirteenth day of October, one thousand eight hundred and fifty-six, at the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claims which are the subjects of inquiry in these actions? Are you related to the claimants, or either of them, and if yea, in what degree?

Answer. My name is James W. Bleecker; am a stock broker; am sixty-nine years of age; have resided during the past year in the city of New York, and have always resided in that city; I have no interest, direct or indirect, in the several claims which are respectively the subjects of inquiry in the two above entitled actions, and am not in any way related to either of the above named claimants, or to said Elbert Anderson.

Second interrogatory. Were you acquainted with the individual

members of the following firms, namely: Prime, Ward & Sands, Nevins & Townsend, and Butler & Nevins?

Answer. Yes.

Third interrogatory. What business were those firms engaged in in the years 1814, 1815 and 1816?

Answer. The firms of Prime, Ward & Sands, and Butler & Nevins, were, during those years, engaged in the stock and exchange business; the firm of Nevins & Townsend was not formed until afterwards, as he believes.

Fourth interrogatory. Are either of the members of said firms now living?

Answer. No.

Fifth interrogatory. What was the reputation and standing of the said firm of Butler & Nevins?

Answer. The firm was not wealthy, but they were considered highly honorable and respectable men.

The further examination of this witness was adjourned to October 31, at half-past 1 o'clock, P. M.

October 31, 1856, the examination of this witness was resumed.

Sixth interrogatory. Have you examined the quotations of stocks, treasury notes, specie, and other securities contained in the letter books of the said firm of Butler & Nevins, marked No. 1, D. H. N., under the dates of August 31st, September 2d, 11th, 19th, 20th, and 22d, October 11th, November 10th, and 12th, and December 12th, all in the year 1814; also, under the dates of August 31st, September 9th, 13th, 15th, and 21st, all in the year 1815; also, those contained in the letter book of said firm, marked No. 2, D. H. N., under the dates of January 2d, 4th, 6th, 9th, 16th, 23d, and 24th, all in the year 1816?

Answer. I have.

Seventh interrogatory. Do you consider those quotations as correct?

Answer. According to the best of my belief they are correct; I was engaged in the same kind of business as the said firm during those years. The banks of New York suspended specie payments, according to the best of my recollection, on the thirty-first day of August, 1814.

Eighth interrogatory. Do you know of any other matter relative to the claims in the above entitled actions respectively?

Answer. No.

JAMES W. BLEECKER.

Subscribed in my presence, November 1st, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator, &c., of ELBERT ANDERSON,
deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Reuben W. Folger, a witness produced on the part of the above named claimants, respectively, in the above entitled actions, this seventh day of November, one thousand eight hundred and fifty-six, in the city of New York.

First interrogatory. What is your name, occupation, age, and place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you related to the claimant, and, if yea, in what degree?

Answer. My name is Reuben W. Folger; am a merchant; upwards of sixty years of age, and have resided in the city of New York for the past year; I have no interest, direct or indirect, in the claim which is the subject of inquiry in the above entitled actions, and am not related to the claimant or to said Elbert Anderson.

Second interrogatory. What was your occupation in the years 1812, 1813, and 1814?

Answer. I was a distiller of domestic liquors, including whiskey and other liquors; I then resided at Athens, Greene County, State of New York.

Third interrogatory. Do you remember any variation occurring in the market prices of domestic liquors, including whiskey, at or about the time of the passage of a law by Congress imposing a duty per gallon on the capacity of stills, which law was passed in July, 1813?

Answer. I recollect that there was a rise generally in the price of domestic liquors, including whiskey, shortly after the passage of that law; I recollect selling sixteen hogsheads of whiskey, after the passage of the law, at a dollar and six cents a gallon, and I had paid for it, previous to the passage of the law, about fifty cents a gallon.

Fourth interrogatory. Do you know of any other matter relative to the claim in the above entitled action?

Answer. No.

R. W. FOLGER.

Subscribed in my presence, November 7th, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Henry James Anderson, the above named claimant, produced and sworn as a witness to prove the loss of two certain drafts referred to on page 288 of exhibit No. 5, in the above entitled action, and also of the notice of protest of the draft secondly mentioned on said page, and also in relation to the loss of all other papers connected with such drafts and protests, this 27th day of November, 1856:

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you related to the claimant, and, if yea, in what degree?

Answer. My name is Henry James Anderson; am not engaged in any business; I was formerly professor of mathematics at Columbia College; am fifty-seven years of age, and have resided for the past year in the city of New York; I am both directly and indirectly interested in the claim referred to; I am the claimant, and am one of the sons of the said Elbert Anderson.

Second interrogatory. Are the papers and vouchers, and other documents appertaining to Elbert Anderson, deceased, and relating to his contracts with the United States of America, for the supply of the army, in your possession, and, if not, state what disposition you have made of them?

Answer. They are not in my possession; I delivered all of them that I could find, after a diligent search, to my son, E. Ellery Anderson, who is prosecuting this claim as my attorney.

HENRY JAS. ANDERSON.

Subscribed in my presence, November 27, 1856.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of Henry James Anderson, the above named claimant, produced and sworn as a witness in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this fourteenth day of January, 1857:

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is Henry James Anderson; was formerly a professor; am nearly fifty-eight years of age, and have resided for the past year in the city of New York; I am directly interested in the claim which is the subject of inquiry in this action; I am the claimant in this action, and am the eldest son of the said Elbert Anderson, deceased.

Second interrogatory. When did the said Elbert Anderson die? State all you know in reference to the custody of all the books, papers, vouchers, and accounts, of whatever description, referring to the several contracts between the said Elbert Anderson, and the United States, for

the subsistence of the army, from the time of his decease to the present time?

Answer. The said Elbert Anderson died in the year eighteen hundred and thirty. All the books, papers, vouchers, and accounts referred to in the above interrogatory, and which were in the possession of the said Elbert Anderson at the time of his death, came into my possession immediately upon his death. From time to time these books, &c., were transferred to the custody of my brother-in-law, Mr. Thomas Lord, for safe keeping; they were delivered to him in the original chests in which I found them; I received then in 1851, from my own brother, Elbert J. Anderson, and they continued in my possession until I transferred them to my son, Elbert Ellery Anderson.

HENRY JAS. ANDERSON.

Subscribed in my presence, January 14, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Thomas Lord, a witness produced and sworn on the part of the claimant in reference to the custody of all books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this fourteenth day of January, 1857.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is Thomas Lord; I am a merchant; am upwards of fifty years of age; and have resided in the city of New York for the past year; I am directly interested in the claim which is the subject of inquiry in this action; I am a brother-in-law, having married a daughter of said Elbert Anderson, deceased.

Second interrogatory. State all that you know in reference to the custody of all the books, papers, vouchers, and accounts, of whatever description, referring to the several contracts between the said Elbert Anderson and the United States, for the subsistence of the army, from the time of his decease to the present time.

Answer. I received several chests said to contain the books, &c., referred to in this interrogatory from my brother-in-law, Mr. Henry James Anderson; they were stored in my house, and were not opened while they remained there; I delivered them to my brother-in-law, Mr. Elbert J. Anderson.

THOS. LORD.

Subscribed in my presence, January 14, 1857.

G. R. J. BOWDOIN, *Commissioner.*

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Elbert J. Anderson, a witness produced and sworn on the part of the claimant in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this fourteenth day of January, 1857.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is Elbert J. Anderson; am not engaged in any business; and about fifty-six years of age; I have resided in Newport during the past year; I am directly interested in the claim which is the subject of inquiry in this action; I am a brother of the claimant, and one of the sons of the said Elbert Anderson, deceased.

Second interrogatory. State all that you know in reference to the custody of all the books, papers, vouchers, and accounts, of whatever description, referring to the several contracts between the said Elbert Anderson and the United States, for the subsistence of the army, from the time of his decease to the present time.

Answer. The books, &c., referred to in this interrogatory, were received by me from my brother-in-law, Mr. Thomas Lord, and were stored in my house; the chests in which they were contained, remained unopened while in my house; I delivered them to my brother, Henry James Anderson.

ELBERT J. ANDERSON.

Subscribed in my presence, January 14, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, Administrator of the estate of ELBERT ANDERSON, deceased, *vs.* THE UNITED STATES OF AMERICA.

Deposition of Elbert Ellery Anderson, a witness produced and sworn to prove the loss of two certain drafts, referred to on page 288, of Exhibit, No. 5, in the above entitled action, and also of the notice of protest of the draft secondly mentioned on said page, and also in relation to the loss of all other papers connected with such drafts and protest this 27th day of November, 1856.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of

inquiry in this action? Are you related to the claimant, and, if yea, in what degree?

Answer. My name is Elbert Ellery Anderson; I am a counsellor at law; am twenty-three years of age; and have resided for the past year in the city of New York; I am indirectly interested in this claim; my compensation for my services in prosecuting the same in this court, being to a certain extent dependent on its recovery; I am the son of the claimant, and the grandson of Mr. Elbert Anderson, deceased.

Second interrogatory. Are the papers, and vouchers, and other documents appertaining to Elbert Anderson, deceased, and relating to his contracts with the United States of America, for the supply of the army in your possession; and have you made diligent search among them for the two drafts referred to on page 288 of Exhibit No. 5, in this action; and also for the notice of protest of the draft secondly mentioned on said page, and also for any and all other papers connected with such drafts and protests; and, if yea, state when was such search made, and what was the result of it?

Answer. The papers, and vouchers, and documents referred to in this interrogatory, are in my possession, and were delivered to me by my father, Mr. Henry J. Anderson; I have, during the progress of this litigation, made repeated and diligent searches among said papers, vouchers, and documents, for the said drafts, protests, and the notices of protests thereof, and all other papers connected therewith, and only find the letters contained in Exhibit No. 5, on page 288, and a notice of protest now attached to said page, and also some letters in which the fact of said drafts having been protested, is incidentally mentioned, and which letters will be produced if required.

E. E. ANDERSON.

Subscribed in my presence, November 28, 1856.

G. R. J. BOWDOIN,
Commissioner.

COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, *against* THE UNITED STATES OF AMERICA.

Deposition of Elbert Ellery Anderson, a witness produced and sworn on the part of the claimant, in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, relating to the several contracts of Elbert Anderson, deceased, with the United States of America, for the subsistence of the army, this seventeenth day of January, 1857, at the city of New York.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence during the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this cause? Are you in any, and what, degree related to the claimant?

Answer. My name is Elbert Ellery Anderson; I am a counsellor at law; am twenty-three years of age; have resided during the past

year in the city of New York ; I am indirectly interested in the claim which is the subject of inquiry in this action ; I am the son of the claimant, and grandson of the intestate.

Second interrogatory. State all that you know in reference to the custody of all the books, papers, accounts, and vouchers, of whatever description, referring to the several contracts between the said Elbert Anderson, and the United States, for the subsistence of the army, from the time of his decease up to the present time.

Answer. I received from my father, Mr. Henry James Anderson, in the year eighteen hundred and fifty-four or thereabouts, several chests containing books, papers, vouchers, and accounts, relating to the contracts referred to in this interrogatory, and they have remained in my possession ever since.

Third interrogatory. Look at exhibit No. 8, and state what that book contains, and where you found the receipts and other papers contained therein ; also, look at exhibits Nos. 9 to 23, both inclusive, and state where you found them.

Answer. I found all the papers referred to in the last interrogatory among other papers in the chests delivered to me by my father, as stated in my answer to the second interrogatory.

The further examination of this witness was adjourned to January 31.

January 31, 1857, examination resumed.

Fourth interrogatory. Look at exhibits numbered 24 and 25, and state what they are.

Answer. Number 24 is a letter received by me from the Third Auditor in answer to a requisition made upon him ; number 25 is an account which was contained in number 24, and refers to the final settlement of the contract of 1811.

Fifth interrogatory. Look at exhibits numbered one to seven, (1 to 7,) both inclusive, and state where you found them.

Answer. I found them among the papers contained in the chests above referred to.

E. E. ANDERSON.

Subscribed in my presence, January 31, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, deceased, *against* THE UNITED STATES OF AMERICA.

Deposition of John W. Martin, a witness produced on the part of the above-named claimant in the above entitled action, this twentieth day of January, eighteen hundred and fifty-seven, in the city of New York.

First interrogatory. What is your name, occupation, and age, and what has been your place of residence during the past year? Have you any interest, direct or indirect, in the claim which is the subject of

inquiry in this action? Are you in any, and what, degree related to the claimant?

Answer. My name is John W. Martin; am a broker; am fifty-six years of age; have resided for the past year in the city of Brooklyn; I have not any interest direct, or indirect, in this claim, and am not in any degree related to the claimant, or to the intestate whom he represents.

Second interrogatory. Look at the book now shown you, marked exhibit number 8, and state which of the signatures, if any, appended to the receipts therein contained, are known to you to be genuine.

Answer. I am acquainted with the handwriting of Isaiah Townsend, John Townsend, Samuel Allen, and Jesse Smith, all of whom are now dead, and their signatures appended to their receipts or contracts respectively as they appear in the said exhibit are genuine.

Third interrogatory. Do you know of any other matter relative to the claim in question?

Answer. Not that I recollect at present.

JOHN W. MARTIN.

Subscribed in my presence, January 20, 1857.

G. R. J. BOWDOIN,
Commissioner.

IN THE COURT OF CLAIMS.

HENRY JAMES ANDERSON, administrator of the estate of ELBERT ANDERSON, *vs.* THE UNITED STATES OF AMERICA.

I certify that the following are exact extracts from sundry letters contained in the letter-book of Butler & Nevins, referred to in the foregoing deposition of David H. Nevins, viz:

Letter of September 20, 1814, exchange notes, $4\frac{1}{2}$ a 5 per cent.; letter of October 11, 1814, exchange notes 4 per cent. discount, 6 per cts. 77 a 78; letter of November 15, 1814, treasury notes, $5\frac{1}{2}$ a 6 per cent. discount; Virginia and Baltimore, 6 per cent. discount; District banks, 7 per cent. discount; letter of December 9, 1814, treasury notes $7\frac{1}{2}$ a 8 per cent., considerable sales, 6 per cent., 76 dull, government bills 3 per cent., advanced; letter of December 12, 1814, treasury notes, $7\frac{1}{2}$ a 8 per cent. discount—6 p. c. 65; 76, government bills 3 per cent., advanced; dollars 15 per cent., advanced.

G. R. J. BOWDOIN.

NEW YORK, January 30, 1857.

Commissioner.

Copy from the Records of the War Department.

WAR DEPARTMENT, October 13, 1814.

SIR: Your letter of the third instant, endorsing the contract, correspondence, and accounts of James Byers, esq., contractor, has been

received. The question submitted to the department appears to have been anticipated in Mr. Byers's proposal of January 27, 1812, to furnish the deposits referred to, reserving to himself a claim on the government for reasonable and equitable allowances beyond the price stipulated in his contract for all supplies furnished before that contract should take effect.

It does not appear by the contract referred to that Mr. Byers was bound to furnish casks and boxes, or, in other words, it does appear that when the rations were issued, the casks and boxes belonged to the contract. If, therefore, the casks, boxes, &c., have not been returned to him, and are charged at a fair price, the amount should be passed to his credit.*

I am, sir, very respectfully, your obedient servant;

JAMES MONROE.

Col. T. LEAR,

Accountant War Department.

The foregoing is a true copy.

C. VANDEVENTER.

The above allowance to Mr. Byers, for casks and boxes, was intended to compensate him for his trouble and expense sustained in supplying rations and making deposits before his contract commenced, and no allowance for casks or boxes must be made except in cases of special contract with this department.†

JAMES MONROE.

Col. T. LEAR,

Accountant War Department.

TREASURY DEPARTMENT,
Register's Office, October 9, 1823.

SIR: In compliance with your request of the 6th instant, I have to refer you to the following statement of the manner in which the several drafts on the Secretary of War, therein referred to, were paid. Whether the banks upon which the treasury drew, in payment of your bills, did at the time redeem their notes in specie, cannot be ascertained from the records of this office; neither do they exhibit any information as to the relative value of treasury notes in other parts of the United States; those issued at the treasury were considered as at par when issued.

I am, very respectfully, sir, your obedient servant,

MICHAEL NOURSE,

For the Register.

* This stands unaltered on the books of the War Department.

† This after construction was interlined on the document in the accountant's department after my claim was exhibited. See page 20, printed document.

Statement.

Date of draft on Sec'y of War, as per Anderson's statement.	In whose favor.	Amount.	When paid.	How paid.
Feb. 24, 1814.	T. Townsend.....	\$87,500 00	Mar. 25, 1814	By Bank of Columbia, (in specie.)
Mar. 1, 1814.	J. Burrall	150,000 00	April 4, 1814	By Bank of America.
April 4, 1814.	T. Townsend.....	75,000 00	April 18, 1814	By Farmers and Mechanics' Bank, Philada.
	W. Fish.....	5,000 00	April 25, 1814	By Mechanics' Bank, New York.
June 9, 1814.	T. Townsend.....	100,000 00	June 29, 1814	{ \$37,500 by New York State Bank, Albany. \$62,500 by Mechanics' Bank, New York.
Sept. —, 1815.	.....	56,756 42	Sept. 1, 1815	{ \$56,700 in treasury notes issued at treasury. \$6 42 by Manhattan Company, New York.
Mar. 15, 1815.	.....	181,243 57		{ \$188,500 in treasury notes issued at treasury.
Jan. 5, 1816.	.....	7,389 34	Jan. 11, 1816	{ \$132 91 by Mechanics' Bank, New York.
		188,632 91		

TREASURY OF THE UNITED STATES,
Washington, August 30, 1815.

SIR: Enclosed you will find my two drafts, Nos. 3,839 and 322, (as below,) for \$56,756 42, the amount of warrant No. 2,877 issued by the Secretary of War, on receipt whereof be pleased to favor me with an early acknowledgment, specifying the sum received in treasury notes.

With due consideration, I am, sir, your obedient servant,

TH. T. TUCKER,

Treasurer of the United States.

Draft 3,839 on S. Flewwelling, cashier for.....	56 42
“ 322 on Jos. Nourse, register.....	56,700 00
	\$56,756 42
	\$56,756 42

E. ANDERSON, esq.

No. 322.

Pt. U. U. 2,877.

\$56,700.

TREASURY OF THE UNITED STATES,
Washington, August 30, 1815.

SIR: At sight, pay to Elbert Anderson, esq., New York, or order, fifty-six thousand seven hundred dollars in treasury notes, value received.

TH. T. TUCKER,

Treasurer of the United States.

To Jos. NOURSE, esq., *Register.*

This amount was transmitted to me by J. T. Nourse, register. See my acknowledgment on the back of the letter—dated September 1, 1815—of Thos. T. Tucker, dated August 30, 1815.

E. ANDERSON.

NEW YORK, *September 5, 1815.*

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, enclosing a draft on the Manhattan Company for fifty-six dollars and forty-two cents, and a draft on the Register of the Treasury for fifty-six thousand seven hundred dollars, which last amount has been received this day from Joseph Nourse, esq., Register of the Treasury, in treasury notes.

I have the honor to remain your obedient servant,

ELBERT ANDERSON.

THOMAS T. TUCKER,

Treasurer of the United States.

Differences arising on settlement of the account of Elbert Anderson, for supplies furnished under his contract dated February 25, 1813.

Balance claimed by him per his statement.....	\$266,109 02
Balance remaining in his favor per official statement....	181,234 57
Differences.....	<u>84,874 45</u>

Differences arising as follows:

Amount of casks, barrels, &c., containing the provisions deposited by him under this contract are suspended, viz:

For the deposits on Lake Ontario.....	\$14,781 16
For the deposits on Lake Champlain.....	6,702 10
For the deposits in the city of New York, &c..	1,461 70
	<u>22,944 96</u>

Amount of 911 meat barrels and 3,268 flour barrels, containing the deposits at Salina, Utica, Oswego, Burlington, and Plattsburg, per supplementary account of deposits.....	2,152 84
	<u>25,097 80</u>

The following abstract, said to be for rations issued in Seneca county, and bearing the signature of Lieut. Jacob Meyers, and charged by Mr. Anderson in his general abstract of issues for December, 1813, January, 1814, and February, 1814, have been disallowed, that officer having disavowed his signing those abstracts, viz:

Abstract A, Nos. 106, 109, 110, 112, 122, and 123 to general abstract for December, 1813, and January, 1814, amounting to 16,057 complete rations at 17½ cents.....	2,809 97
Abstract A, Nos. 68, 69, and 70 to general abstract for February, 1814, amounting to.....	13,223

Abstract A, Nos. 63 and 64 to said
general abstract for February, 1814,
are duplicates, amounting to.....

2,409

 15,632
Complete rations at $17\frac{1}{2}$ cents.

2,735 60

 5,545 57

Amount of provisions charged by Mr. Anderson in his general abstract for the quarter ending November 30, 1813, have been deducted as inadmissible, being improper vouchers, viz:

Voucher A, No. 238, Lieut. Kellogg's
receipt for two barrels of pork.....

533 $\frac{1}{3}$

Voucher A, No. 239, Sergeant Stewart's receipt for four barrels of beef.

640

 1,173 $\frac{1}{3}$
At $5\frac{1}{2}$ cents per ration.

64 53

Voucher A, No. 239, Caleb Luther's receipt for
 $74\frac{1}{2}$ bushels wheat, said to be 2,614 rations
of flour, at $7\frac{1}{2}$ cents.....

196 05

 260 58

Amounts of voucher B, Nos. 53 and 54, for 256
complete rations issued to Indians at West
Cayuga, and charged by Mr. Anderson in
his general abstract for February, 1814, are
disallowed, being duplicates, at $17\frac{1}{2}$ cents...

44 80

Amount charged by Mr. Anderson in his
general abstract for the quarter ending August
31, 1813, being for provisions furnished to the
fleet on Lake Ontario and to the crews of two
gun-boats at Plattsburg, is inadmissible at this
office, the vouchers whereof have been accord-
ingly returned to Mr. Anderson, viz:

Amount of issues to the fleet on Lake Ontario,
under command of Commodore Chauncey, in
August, 1813.....

4,893 96

Amount of issues to the crews of two gun-boats
at Plattsburg, under command of Captain
Hall, in June, 1813.....

282 97

 5,176 93

The following sums charged by Mr. Ander-
son in his general abstract of issues, being for
one cent per ration as a premium for issuing
provisions from deposit, and within the Cana-
das, have been deducted. The proper credits
are given him in the abstracts of deposits re-
ceived and charged in his account current, viz:

Amount charged in the quarter ending August
31, 1813

8,857 50

Amount charged in the quarter ending Novem-
ber 30, 1813.....

4,171 95

Amount charged in the quarter ending November 30, 1813.....	4,293 90	
Amount charged on the provisions returned into deposit at Plattsburg in said quarter, is inadmissible.....	722 14	
Amount charged in general abstract for December, 1813, and January, 1814.....	44 58	
	<hr/>	18,090 07

This amount charged by him in his general abstract for the quarter ending May 31, 1814, for an augmented price of rations issued within the Canadas, and for damages sustained by the breach of contract on the part of Major General Hampton, by his appointment of issuing commissaries, from September 15, 1813—the time of his landing his army on Cumberland head—to December 15, 1813, is suspended

16,843 75

Amount charged in general abstract for said quarter, said to be for provisions issued and destroyed at Sodus, in June, 1813. The voucher for this charge being imperfect, is therefore suspended, (see voucher A, No. 199,) viz :

6,400 rations of whiskey, at $3\frac{1}{2}$ cents.....	224	
10,000 rations of meat, at $5\frac{1}{2}$ cents.....	550	
30,364 rations of flour, at $7\frac{1}{2}$ cents.....	2,277 32	
	<hr/>	3,051 32

Amount claimed by Mr Anderson for provisions furnished, as per vouchers A, Nos. 10, 11, and 12 to general abstract for said quarter, is suspended for further explanation, viz :

No. 10, for 40 barrels flour, } Damaged.
 No. 11, for 25 do. }

65 barrels flour, equal to 11,325 rations, at $7\frac{1}{2}$ cents.....	849 37	
Amount of barrels containing said flour.....	24 70	
No. 12, for 38 barrels pork and beef, 9,386 rations, at $5\frac{1}{2}$ cents.....	516 27	
	<hr/>	1,390 34

Amount of voucher F, No. 7, to the aforesaid abstract, being for expenses in removing the provisions from Plattsburg in October, 1813, is deducted, being a duplicate

100 92

Errors and overcharges in the abstracts of issues.

12 $\frac{4}{9}$ rations flour overcharged for New York 2d June, 1813, voucher 7, at $4\frac{8}{10}$ cts.	\$0 59
189 rations whiskey overadded for Champlain, July, 1813, voucher 200, at $3\frac{1}{2}$	6 61

13 complete rations overcalculated for Plattsburgh, in June, 1813, No. 87.	
120 complete rations overcalculated for Plattsburgh, in July, 1813, No. 88.	
115 complete rations overcalculated for Sackett's Harbor, in July, 1813, No. 125.	
10 complete rations overcalculated for Sackett's Harbor, in August, 1813, No. 126.	
1 complete ration overadded for Auburn, in July, 1813, No. 136.	
20 complete rations overcalculated for Geneva, in August, 1813, No. 150.	
120 complete rations overcalculated for Fort George, in June, 1813, No. 169.	
610 complete rations overcalculated for Fort George, in July, 1813, No. 179.	
210 complete rations overcalculated for Fort George, in July, 1813, No. 171.	
1 007 complete rations overcalculated for Fort George, in August, 1813, No. 172.	

2,226 completerations overcalculated, at $17\frac{1}{2}$ cts.	389 55
---	--------

Amount overcharged in the prices of flour barrels and boxes, furnished to contain provisions for the troops on march.....	13 74
---	-------

\$410 49

[See account for quarter ending 31st August, 1813.]

26 complete rations, twice drawn for 25th and 26th December, 1813, see voucher No. 48, Hudson.	
32 complete rations twice drawn for 22d September, 1813, see voucher No. 56, Albany	
1,300 complete rations overcalculated for Niagara, September and October, 1813, see voucher No. 222.	
696 complete rations twice drawn, for 1st and 2d October, 1813, see voucher No. 226.	
160 completerations overcalculated for Lewistown, September, 1813, see voucher No. 40, militia.	
100 complete rations overcalculated for Fort Richmond, September, 1813, see voucher No. 9, volunteers.	

2,314 complete rations overcalculated, at $17\frac{1}{2}$ cts.	\$404 95
--	----------

718 complete rations improperly corrected as having been an error in the abstract for Greenbush, for September, 1813, see voucher 71, at $14\frac{8}{10}$ cents.....	106 26
--	--------

8 rations whiskey overadded, in abstract for Plattsburgh, voucher 45, militia.....	28	
14 $\frac{6}{9}$ rations flour overcalculated, in abstract No. 159 and 161, for Oswego.		
13 rations flour overcalculated, in abstract No. 172, for Sackett's Harbor.		
<hr/>		
27 $\frac{6}{9}$ rations flour overcalculated, at 7 $\frac{1}{2}$ cents	2 07	
This sum overcalculated in his general abstract on 135 $\frac{1}{4}$ pounds candles, for New York harbor	2 00	
This sum overcalculated in said general abstract, on 330,006 complete rations, for Sackett's Harbor.....	1,000 00	
This sum overcalculated on the issues for the Indian department.....	5 00	
Amount overcharged in the prices of flour barrels, casks, and boxes furnished to contain provisions for troops on march.....	13 68	
	<hr/>	1,534 24
[See account for quarter ending 30th Nov., 1813.]		
Overcalculated on 984 rations flour, for Fort Columbus and Bedlow's Island.....	1 00	
Overcalculated on 19,419 complete rations for volunteers.....	50	
8 complete rations overcalculated for New York city, in December, 1813, for volunteers, at 14 $\frac{8}{10}$ cents.....	1 18	
84 complete rations overcalculated for Sag Harbor, in January, 1814, voucher 21.		
25 complete rations overcalculated for Hudson, in January, 1814, voucher 39.		
20 complete rations overcalculated for Albany, in December, 1813, voucher 40.		
3 complete rations overcalculated for Oswego, in January, 1814, voucher 84.		
700 complete rations overcalculated for Sackett's Harbor, in January, 1814, voucher 86.		
6 complete rations overcalculated for Cha-eauquay, in December, 1813, voucher 100.		
33 complete rations overcalculated for Junius, in January and February, 1814, voucher 103.		
11 complete rations overcalculated for Can-andaigua, December, 1813, voucher 116		
3 complete rations overcalculated for Au-burn, January, 1814, voucher 121.		
20 complete rations overcalculated for Fort George, in December, 1813, voucher 126.		

24 complete rations overcalculated for Canandaigua, in December, 1813, voucher 4, militia.

929 complete rations overcalculated, at $17\frac{1}{2}$ cts.	162 57	
	<hr/>	165 25

[See account of December 1813, and Jan., 1814.]

900 complete rations overadded in abstract for New York city, February, 1814, at $14\frac{8}{10}$ cts.	133 20
--	--------

25 complete rations twice charged, for Hudson, 26th February, 1814, voucher 25.

9 complete rations overcalculated for Hudson, in February, 1814, voucher 26.

100 complete rations overadded for Chateauguay, in February, 1814, voucher 59.

134 complete rations, at $17\frac{1}{2}$ cents.....	180 95	
	<hr/>	314 15

[See account for February, 1814.]

9 complete rations overcalculated, in abstract for May, 1814, in Ellis's Island, at $14\frac{8}{10}$ cts.	\$1 33
---	--------

288 complete rations overcalculated, for Poughkeepsie, in March and April, 1814.

900 complete rations overcalculated, for Plattsburgh, in April, 1814.

41 complete rations overcalculated, for Schenectady, in March, 1814.

6 complete rations overcalculated, for Cherry Valley, in April, 1814.

10 complete rations overcalculated, for Canandaigua, in March, 1814.

185 complete rations overcalculated, for Batavia, in May, 1814.

10 complete rations overcalculated, for Champlain, in April, 1814.

2 complete rations overcalculated, for Cambria, in March, 1814.

1,442 complete rations overcalculated, at $17\frac{1}{2}$ cts.	252 35	
100 rations whiskey overcalculated, Plattsburgh, March, 1814, at $3\frac{1}{2}$ cents.....	3 50	
$\frac{1}{4}$ pound soap overcharged, Blackrock and Williamsville	3	
Overcharged in price of barrels, &c., containing provisions for troops on march.....	8 40	
	<hr/>	265 61

[See account for the quarter ending 31st May, 1814.]

Overadded in general abstract of issues.....	\$0 09
--	--------

Amount overcharged on flour barrels furnished to contain provisions for troops on march...	1 69
Error made by Mr. Anderson of 8 pounds candles, as having been omitted, has been taken into view in his calculation.....	1 44
	<hr/>
	3 22

[See acc't for q'r ending May 31, 1814, in continuation.]

Amount of 1,000 rations of meal overcharged from voucher A No. 2, to the supplementary abstract for the quarter ending 31st May, 1814.....	55 00	
	<hr/>	58 22
Amount of provisions stolen at Cambria in the month of April, 1814, as stated in Lieut. Col. Harris's certificate, (see voucher D, No. 3, herewith,) is disallowed, being a duplicate voucher, viz:		
2,848 rations whiskey, at $3\frac{1}{2}$ cents.....	\$99 68	
350 rations flour, at $7\frac{1}{2}$ cents.....	26 25	
	<hr/>	125 93
The amount of value of the rigging and sails appertaining to the schooner Enterprise, which was saved by the owners, being \$250, is charged with the amount of the said schooner, instead of being deducted from value of said schooner, making a difference of.....		500 00
Amount of 7,555 $\frac{1}{2}$ rations of pork, overcharged in voucher No. 5, to the abstract of losses, (this voucher is marked D, No. 2, in the general abstract for the quarter ending 30th November, 1813, which see,) at $5\frac{1}{2}$ cents.....		415 54
Amount of 27 rations flour overcharged in voucher, No. 13, to abstract of losses, voucher returned to Mr. Anderson for further testimony.....		\$2 2
The following vouchers included in the general abstract of losses sustained by Mr. Anderson, have been returned to him for the purpose of obtaining further evidence as to losses therein mentioned—the amount whereof is accordingly suspended, viz:		
Voucher No. 173, being amount of provisions destroyed and taken by the enemy at Forty-mile Creek, in June, 1813, suspended for deposition.....	1,823 82	
Part of voucher No. 1, being the appraised value of schooner "Enterprise," suspended for further proof.....	1,150 00	

Voucher No. 2, for provisions taken at Black Rock, suspended for want of deposition.....	682	12	
Voucher No. 7, for provisions taken at Niagara, Lewiston, and Schlosser, for same reason	12,170	57	
Voucher No. 8, for provisions at Black Rock and Buffalo, for same reason.....	4,993	45	
Voucher No. 11, for provisions at Williams-ville, for same reason	634	13	
Voucher No. 12, for provisions stolen at Cam- bria, for same reason.....	125	93	
Voucher No. 13, for provisions at Eighteen-mile Creek, for same reason.....	378	77	
Voucher Nos. 14 and 15, for baking utensils, for further proof, for same reasons.....	450	00	
Voucher Nos. 16, for provisions destroyed at Oswego, for deposition, for same reason.....	4,722	60	
Voucher No. 17, for provisions destroyed at Oswego, for deposition, &c. ; none on the cer- tificate.....	5,096	43	
Voucher No. 21, amount of Joseph Pardie's claim for driving cattle, as disallowed.....	274	00	
Voucher No. 22, amount of provisions captured at Oswego, suspended for want of deposition and other circumstances, noted on vouchers, Nos. 16 and 17.....	6,726	12	
Voucher No. 23, for 200 pounds soft bread, (a duplicate ;) this is included in voucher No 6.	13	28	
	39,243	22	
Amount of casks, barrels, &c., containing pro- visions captured at Black Rock and Buffalo, 90 suspended.....	333	90	
Amount of casks and barrels at Os- wego and Putneyville, captured at Black Rock and Buffalo.....	444	10	
	778	00	
			40,021 22
Amount of barrels, &c., containing provisions on board schooner "Enterprise".....	158	25	
Amount of barrels, &c., containing provisions at Black Rock.....	30	16	
Amount of barrels, &c., containing provisions at Cape Vincent.....	48	00	
			236 41
Amount short credited in his account for pro- visions received from deposits, abstract B, No. 4.....			74 66
Amount of provisions received from deposits made by Augustus Porter, on 25th June and July, 1813, at New York and at Black Rock, is not credited by Mr. Anderson.....	2,950	57	

Amount of 42 barrels of pork and 51 barrels of beef, received by his agent at Oswego Falls, dated, 31st May, 1814, not credited in Mr. Anderson's statement.....	878 46	3,829 03
Amount of 19 flour barrels overcharged in his abstract for the quarter ending 31st May, 1814, in continuation, on the provisions destroyed at Oswego, on 6th May, 1814; see voucher No 17 to abstract of losses.....		7 22
Overcharged on provisions issued to carpenters and teamsters repairing boats at Plattsburgh; see voucher No. 5, to quartermaster's account.....		1 67
Balance due the United States on settlement of his account for supplies furnished under his contract, dated 7th November, 1811, brought to his debit in the present account.....		1,813 31
		<u>\$125,221 53</u>

From which deduct the following short calculations, &c., made in his genreal abstract of issues, viz :

First quarter :

2 complete rations short added for Niagara, in July, 1813, voucher 167.	
8 complete rations short added for Champlain, in July, 1813, voucher 200.	
10 complete rations short added, at 17½ cents.....	1 75
12 rations whiskey, Fort George, June, 1813.....	02
	<u>1 77</u>

Second quarter :

3 complete rations short added for Auburn, voucher 189.	
9 complete rations short added for Canandai-gua, voucher 203.	
1 complete ration short added for Auburn, voucher 52, Ind. department.	
12 complete rations short added, at 7½ cents.....	2 27
13½ rations meat, short added at Oswego, No. 167.....	73
	<u>3 00</u>

Third quarter :

100 complete rations short added for Albany, No. 44, at 17½ cents.....	17 50
45 complete rations short added for Canandai-gua, No. 71, at 17½ cents.....	7 88

Fourth quarter :

100 complete rations short added at Fort Columbia, May, 1814, at $14\frac{8}{10}$ cents	14 80	
Difference of $7\frac{1}{2}$ per ration on 674 rations issued to Sea fencibles.....	50 55	
6 pounds candles short added for Cherry valley, in April.....	1 08	
4,000 complete rations short added for Batavia in April, 1814.		
10 complete rations short added for Auburn, in May, 1814.		
4,010 complete rations, at $17\frac{1}{2}$ cents.....	701 75	
		768 18
19 flour barrels furnished to contain provisions for troops on March, 1814, omitted in his statement		4 75
Over credited in his account of deposits received per voucher B, No. 1.....		06
Over credited in his account of deposits received per voucher B, No. 3.....		80 19
The following provisions included in voucher No. 22, to abstract of losses are not charged by Mr. Anderson, viz :		
4,160 rations of bread, at $7\frac{1}{2}$ cents.....	312 00	
6,260 quarts of salt, at $2\frac{1}{2}$ cents.....	156 50	
Short calculated.....	27	
		468 77

The following sums disallowed in the present statement of differences have been credited in Mr. Anderson's account :

Improper vouchers by P. Meyers.....	\$5,545 57	
Navy rations on Lake Ontario.....	4,893 96	
Navy rations at Plattsburgh.....	282 97	
Navy rations at Plattsburgh.....	57 84	
Short credited in this voucher.....	3 83	
Errors, &c., credited in his account.....	1,000 50	
Charge of one cent per ration for issues in Canada, &c.....	17,367 93	
This amount allowed him, being $12\frac{1}{2}$ per cent. on the issues to General Hampton's army,	9,843 75	
		40,356 45
Difference required.....		\$84,865 08

Dr. General statement to contract November 7, 1811.

B.—No. 1.

First. For amount of sundry provision received by me between the 31st December, 1812, and 22d May, by virtue of orders from General Dearborn, dated April the 4th, 1814, from deposit made under contract of 7th November, 1811, at Canandaigua, Cayuga, Geneva, Oswego, and Albany, as per general abstract on file in the accountant's office, \$111,802 92, at 14 cents, contract price, per ration, but which was in reality transferred to the issue of contract of 25th February, 1813, on Lake Ontario, when the company concerned in that contract could not supply from their own purchase on deposit, and for which had they supplied from their deposit after 1st of June they would have been charged the additional contract price, viz: 17½ cents per ration, which difference by the said contract grows out of and to the benefit of contract 7th November, 1811; see report and abstract book.....	\$26,891 20
Second. Allowance of issuing the aforesaid deposit by virtue of the contract 7th November, 1811; see additional article to the said contract.....	20,891 61
Third. This amount allowed me under contract 7th November, 1811, for issues made by General Wade Hampton, as an interference of my rights by the additional article of said contract, for issues from the deposit made on Lake Champlain antecedent to the contract 25th February, 1813,.....	9,843 75
Fourth. For amount of provision received by me between 12th November and 25th May, 1814, being from deposits made under contract 7th November, and partly from deposits made by James Byers, but erroneously entered as from deposits made under contract of 25th February, when it is a well-known fact that not more than one-fourth was deposited by the contract of 25th February; see voucher on file and general abstract of deposits made and received back for issue on Lake Champlain.....	193,287 34
Twelve and a half per cent. allowance and one cent for issue of the above deposit under the said contract; see additional article.....	33,825 27

Deduct one fourth the above as really arising under contract of 25th February, 1813,.....	8,456 31	
	<hr/>	25,368 96
Extra services, E. A.,.....		12,500 00
Fifth. For additional amount of provision received from deposit made under contract of 7th November, 1811, between June, 1813, and May, 1814, on Lake Champlain erroneously entered as from deposit of 25th February, 1813. "See Abstract Book."		31,064 65
Allowance of $12\frac{1}{2}$ per cent., and one cent per ration for issue of 155,313 rations under additional articles of above contract.....		5,435 96
		<hr/>
		88,431 48

Allowance.

Being desirous to render justice in equity as well as in law, to the gentlemen engaged with me in the article marked C for the execution of the articles marked A and B, dated 25th February, 1813, signed by John Armstrong, I have proposed a generous distribution of the above sum of 88,431 48 viz, one equal half part to contract of 7th November, 1811; the other equal half part to contract of 25th February, 1813. Inasmuch as the agents employed by articles A and B aided, under my direction and control, to carry the article for issue under contract of 7th November, 1811, into effect, and notwithstanding the services, aid, and assistance of one of the principals to the contracts marked A and B, dated 25th February, 1813, was all along withheld, contrary to the express stipulation and the consideration to be performed, and kept to excuse his share of the profits arising out of the last mentioned contract. On this express condition, however, that the party who has not rendered the services or aid in carrying the contract marked A and B into execution, nor the articles of issue of contract dated 7th November, 1811, shall forthwith make an equitable allowance to the parties who have devoted their time, health, and labor to a happy and prosperous fulfilment of the original article marked A and B, dated 25th February, 1813.....

44,215 74

Errors Excepted.

\$44,215 44NEW YORK, *January* 12, 1816.

ELBERT ANDERSON.

No. 4.

We hereby certify that, upon an examination of our books, it appears that United States treasury notes in this market were, on fourth of April, in the year one thousand eight hundred and fourteen, at par, payable in specie. On the eighteenth of April, one thousand eight hundred and fourteen, at par, payable in specie. On the twenty-fifth of April, one thousand eight hundred and fourteen, at ninety-nine and one-half per cent., payable in specie. On the twenty-ninth June, one thousand eight hundred and fourteen, at ninety-nine and one-half per cent., payable in specie. On the first September, one thousand eight hundred and fifteen, at eighty-nine per cent., payable in specie; and on the eleventh day of January, one thousand eight hundred and sixteen, at ninety-one and forty-three hundredths per cent., payable in specie.

PRIME WARD & SANDS.
NEVINS & TOWNSEND.

NEW YORK, *November 1, 1823.*

City and County of New York, ss:

On the tenth day of November, one thousand eight hundred and twenty-three, personally appeared before me Joseph Sands, known to me to be one of the firm of Prime Ward & Sands of this city, exchange brokers, and acknowledged that he had executed the within instrument in the name of said firm, and for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

City and County of New York, ss:

On the tenth day of November, one thousand eight hundred and twenty-three, personally appeared before me, Russell H. Nevins, known to me to be one of the firm of Nevins & Townsend of this city, exchange brokers, and acknowledged that he had executed the within instrument in the name of said firm, and for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, Richard B. Connolly, clerk of the city and county of New York, do hereby certify that O. H. Hicks, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment, a commissioner of deeds for said city and county, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such commissioner, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the [L. s.] seal of the county, the fifteenth day of April, 1856.

RICHARD B. CONNOLLY, *Clerk,*

No. 6.

NEW YORK, *November 8, 1823.*

I hereby certify that on the 1st September, 1815, Treasury notes were sold in this city at one per cent. discount, payment in notes of the banks in this city, and that on the 11th January, 1816, treasury notes were also sold in this city at three-fourths of one per cent. discount, payment to be made in the notes of the banks in this city.

I also certify that on the 10th January, 1816, I received a draft, drawn at Boston on this city, which was purchased at Boston at nine and a half per cent. discount, said draft payable here in the notes of the banks here. And that on the 26th September, 1815, we purchased a draft on Boston at $12\frac{1}{2}$ per cent. premium, payable in the notes of the banks in this city.

A. H. LAWRENCE.

City and county of New York, ss:

On the eighth day of November, 1823, personally appeared before me, Augustus H. Lawrence, of this city, exchange broker, and known to me, and acknowledged that he executed the above instrument for the purposes therein mentioned.

O. H. HICKS, *Commissioner.*

No. 7.

PHILADELPHIA, *December 6, 1825.*

SIR: Agreeably to your request, we have made a reference to our books, and herewith annex the quotations of treasury notes and specie at the periods mentioned, viz:

In September, 1815, specie is quoted at 17 to 18 per cent. premium; drafts on Boston, at 17 to 18 per cent. premium; treasury notes, at 4 to 5 per cent. premium.

In January, 1816, specie is quoted at 13 to 14 per cent. premium; drafts on Boston, at 13 to 14 per cent. premium; treasury notes, at 4 to 5 per cent. premium.

These quotations, we think, may be relied on as correct.

We are, sir, yours, very respectfully,

S. AND J. NEVINS & CO.

No. 9.

Contract of Elbert Anderson, jun., for supplying rations from the 1st day of January, 1813, to the 31st day of May, 1814.

ARTICLES OF AGREEMENT made on the twenty-fifth day of February, anno Domini, one thousand eight hundred and thirteen, between John Armstrong, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, jun., of the city of New York, of the other part.

This agreement witnesseth, That the said John Armstrong, for and behalf of the United States of America, and the said Elbert Anderson, jun., his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz :

First. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York and the western and northern vicinity, within the Canadas, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and thirteen, to the thirty-first day of May, eighteen hundred and fourteen, both days inclusive, at the following prices ; that is to say, at any place where rations shall be issued within the city and harbor of New York, and at the encampment at Greenbush, at fourteen cents eight mills per ration. At all other places within the State of New York and the Canadas, at seventeen cents five mills per ration ; provided, however, that for all rations required within the enemy's territory, the price of the rations shall be augmented in proportion to the expense of transportation and issue in the enemy's country, the supplies having been delivered on account of government at magazines designated for that purpose within the State of New York ; and when it may become necessary, the public agents, boats, and teams shall be employed in transporting from such depots, by order of the commanding general, on representation of the contractor or his proper agent that such transportation cannot be furnished independently of the army assistance ; provided, also, that the contractor shall at all times have reasonable notice when and where deposits are to be made for transportation into the enemy's country, as well as the amount required for that purpose. Where the price of the ration is fourteen cents eight mills, the prices of the component parts of the same shall be, for meat, five cents five mills ; for bread or flour, four cents eight mills ; liquor, three cents five mills ; small parts, one cent. Where the price of ration is seventeen cents five mills, the prices of the component parts of the same shall be, for meat, five cents five mills ; bread or flour, seven cents five mills ; liquor, three cents five mills ; small parts, one cent. The prices of the component parts of the small parts of the ration shall be, eighteen cents per pound for candles ; twelve cents five mills per pound for soap ; four cents five mills per quart for vinegar, and two cents five mills per quart for salt ; provided, also, that the thirty days' notice required to be given by the government of the post or place where rations may be wanted, shall not be understood to apply when the rations are taken from any deposits previously made on account of the government.

Second. That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz : One pound and a quarter of beef, or three quarters of a pound of salted pork ; eighteen ounces of bread or flour ; one gill of rum, whiskey or brandy,

and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every one hundred rations.

It is understood that it shall be in the option of the general, or office commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the Elbert Anderson, jun., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the line aforesaid, upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration.

It is understood that if the contractor shall be required to deposit provisions at one place or post, and shall afterwards be required to move them to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required without expense to the United States.

Fourth. That whenever and so often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, jun., or his agent, and in case of disagreement, a third person, to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, jun., or his agent, shall fail or neglect to appoint a person to inspect the said provisions, after a reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper to inspect the provisions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey or inspection, may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in the case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jun., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to

compose rations to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the contract price of the rations or the component parts, and at the appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished whenever, in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and that the said Elbert Anderson, jun., his heirs, executors or administrators shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe keeping of the provisions deposited from time to time at such posts respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jun., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to him or them.

Tenth. That all such advances of money as may be made to the said Elbert Anderson, jun., his heirs, executors, or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the limits aforesaid may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jun., his heirs, executors, or administrators, in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum per annum, from the time of such expiration until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators, be found to be due to him or them, for or on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators; provided, however, that no member of Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

In witness whereof, the said Secretary of War, for and behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War office of the United States, and the said [L. s.] Elbert Anderson, jun., hath hereto set his hand and seal the day and year above written.

JOHN ARMSTRONG. [L. s.]
ELBERT ANDERSON, JR. [L. s.]

Signed, sealed and delivered in presence of—

DAN'L BARKER.

GEORGE BOYD.

Whereas by a certain agreement made on the day of between Secretary of War, and of the State of it was stipulated that the months, supplies of rations at

Now therefore it is agreed between the said and

First. That in an inventory shall be taken as soon as possible, which shall comprise all such supplies as shall have been actually delivered on or before the last day of next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post, and the party of the second part of this agreement or his agent, and duplicate receipts given therefor by the said party of the second part, or his agent, expressing the quantity and quality of each article.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage, of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies, as aforesaid, to the troops at the several posts, in rations to consist as follows, viz :

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy, or whiskey.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half candles to every hundred rations.

Fifth. That the said party of the first part shall pay or cause to be paid to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

In witness whereof, the said Secretary of War, on behalf of the United States, hath hereunto subscribed his name, and affixed the seal

of the War Office of the United States, and the said ha
hereto set hand and seal the day and year last above written.

Signed, sealed, and delivered in the presence of—

No. 10.

ARTICLES OF AGREEMENT made on the seventh day of November, anno Domini, one thousand eight hundred and eleven, between William Eustis, Secretary for the Department of War of the United States of America, of the one part, and Elbert Anderson, jun'r, of the city of New York, of the other part.

This Agreement witnesseth, that the said William Eustis, for and on behalf of the United States of America, and the said Elbert Anderson, jr., his heirs, executors, and administrators, have mutually covenanted and agreed, and by these presents do mutually covenant and agree to and with each other, as follows, viz:

First. That the said Elbert Anderson, jr., his heirs, executors, or administrators, shall supply and issue all the rations, to consist of the articles hereinafter specified, that shall be required of him or them for the use of the United States, at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York, (Niagara and its dependencies excepted) and the State of New Jersey, thirty days' notice being given of the post or place where rations may be wanted, or the number of troops to be furnished on their march, from the first day of June, eighteen hundred and twelve, until the thirty-first day of May, eighteen hundred and thirteen, at the following prices; that is to say, at any place where rations shall be issued within the city and harbor of New-York, for thirteen cents five mills per ration, within all other parts of the State of New York at fourteen cents per ration, and within the State of New Jersey for fifteen cents five mills per ration. Where the price of the ration is thirteen cents five mills, the component parts thereof shall be, for meat five cents, bread or flour four cents, liquor three cents five mills, small parts, one cent. Where the price of the ration is fourteen cents, the component parts thereof shall be, for meat, five cents five mills, flour or bread four cents, liquor three cents five mills, small parts one cent. Where the price of the ration is fifteen cents five mills, the component parts shall be, for meat six cents, flour or bread five cents five mills, liquor three cents, small parts one cent. The prices of the component parts of the small parts of the ration shall be eighteen cents per pound for candles, twelve cents five mills per pound for soap, four cents five mills per quart for vinegar, and two cents five mills per quart for salt.

Second. That the ration to be furnished and delivered by virtue of this contract, shall consist of the following articles, viz: One pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey, or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and an half of candles to every one hundred rations.

It is understood that it shall be in the option of the general, or officer commanding an army or a great military district, in all cases not otherwise provided for by this contract, to direct when and how often fresh or salted meat shall be issued by general orders, to be promulgated a reasonable time before the issue is to commence; that in all cases where salted provisions are issued, the article of salt shall not be required; that the contractor shall always issue flour two days in every week, and the option of the bread or flour for the remainder of the week be with the contractor.

Third. That supplies shall be furnished by the said Elbert Anderson, jr., his heirs, executors, or administrators, at the fortified places and military posts that are or may be established in the States of New York and New Jersey aforesaid, upon the requisition of the commandant of the army or a post, in such quantities as shall not exceed what is sufficient for the troops to be there stationed, for the space of three months in advance, in good and wholesome provisions, consisting of due proportions of all the articles forming the ration. And the said Elbert Anderson, jr., when required by the Secretary of War, shall, instead of the ardent spirits mentioned, furnish to the troops of the United States stationed in the harbour of New York an equivalent in good malt liquor or light wines, at such season of the year as in the opinion of the President of the United States may be necessary for the preservation of their health.

It is understood that if the contractor shall be required to deposite provisions at one place or post, and shall afterwards be required to move them to be delivered at another place or post, the expenses of transportation to such other place or post shall be borne by the United States. It is also understood that all supplies are to be originally delivered at the posts where they may be required, without expense to the United States.

Fourth. That whenever and as often as the provisions stipulated to be furnished under this contract, shall, in the opinion of the commanding officer of the post or place, where they are offered to be issued, be unsound, unfit for use, or of an unmerchantable quality, a survey shall be held thereon, by two disinterested persons, one to be chosen by the commanding officer, and the other by the said Elbert Anderson, or his agent, and in case of disagreement, a third person, to be chosen by mutual consent, who shall have power to condemn such part of the provisions as to them may appear unfit for use. But if the said Elbert Anderson, jr., or his agent, shall fail, or neglect to appoint a person to inspect the said provisions, after reasonable notice in writing, it shall be permitted to the said commanding officer to appoint such persons as he may think proper, to inspect the provisions, under oath, with power to condemn, as aforesaid. And all provisions condemned by such survey may be destroyed by the commanding officer.

Fifth. That the commanding general, or person appointed by him, at each post or place, in case of absolute failure or deficiency in the quantity of provisions contracted to be delivered and issued, shall have power to supply the deficiency by purchase, at the risk and on account of the said Elbert Anderson, jr., his heirs, executors, or administrators.

Sixth. That all losses sustained by the depredations of an enemy, or by means of the troops of the United States, in articles intended to compose rations, to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, shall be paid for at the exact price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more creditable characters, and the certificate of a commissioned officer, when the same can be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation is claimed.

Seventh. That escorts and guards for the safety of the provisions, and for the protecting of the cattle against an enemy, shall be furnished, whenever in the opinion of the commanding officer of the army, or of any post, to whom application may be made, the same can be done without prejudice to the service, and that the said Elbert Anderson, jr., his heirs, executors, or administrators, shall not be answerable for any deficiency of supplies, at any of the said posts or places, if it shall appear, upon satisfactory proof, that such deficiency was occasioned by the want of proper escorts and guards.

Eighth. That at all stationary posts, proper store-houses shall be provided on behalf of the public, for the reception and safe-keeping of the provisions deposited from time to time at such posts respectively; and the contractor shall suffer no loss for want of such stores.

Ninth. That the said Elbert Anderson, jr., his heirs, executors, or administrators, shall render his or their accounts to the accountant of the Department of War, for settlement, at least once in every three months, agreeably to such form as by the said accountant may be established and made known to

Tenth. That all such advances of money as may be made to the said Elbert Anderson, his heirs, executors, or administrators, for and on account of the supplies to be furnished pursuant to this contract, and all such sums of money as the commanding officer of the troops or recruits that are or may be within the States above mentioned, may cause to be disbursed, in order to procure supplies, in consequence of any failure on the part of the said Elbert Anderson, jr., his heirs, executors, or administrators in complying with the requisitions herein contained, shall be duly accounted for by him or them by way of set-off against the amount of such supplies, and the surplus, if any, repaid to the United States, immediately after the expiration of the term of this contract, together with an interest at the rate of six per centum, per annum, from the time of such expiration, until the same shall be actually repaid. And that if any balance shall, on any settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors, or administrators, be found to be due to him or them, for and on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid. And that no unreasonable or unnecessary delay, on the part of the officers of the United States, shall be given to the settlement of the accounts of the said Elbert Anderson, jr., his heirs, executors or administrators. Provided, however, that no member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom.

In witness whereof, the said Secretary of War, for and on behalf of the United States, hath hereunto subscribed his name, and affixed the seal of the War Office of the United States; and the [L. s.] said Elbert Anderson, jun'r, hath hereto set his hand and seal the day and year first above written.

W. EUSTIS.

ELBERT ANDERSON, JUN'R.

Signed, sealed, and delivered in the presence of—

DAN'L PARKER.

JOHN J. ABERT.

WHEREAS by a certain agreement made on the seventh day of November, 1811, between W. Eustis, Secretary of War, and Elbert Anderson, jr., of the State of New York, it was stipulated that the deposits of three months, supplies of rations may be required. Now therefore it is agreed by the order of the said W. Eustis to Major General H. Dearborn that when issues are required from the public deposits that he might call on the said Elbert for that purpose.

First. That an inventory shall be taken as soon as possible, which shall comprise all such supplies as shall have been actually delivered on or before the last day of May, 1813, next, by virtue of the said agreement, and shall on that day remain unexpended.

Second. That the inventory shall be taken in the presence of the commanding officer of the post, and the party of the second part of this agreement, or his agent, and duplicate receipts given therefor by the said party of the second part, or his agent, expressing the quantity and quality of each article, or delivery to be made by the public store, purser, or other agents who have charge of the deposits.

Third. That the party of the second part shall account to the United States for all the supplies which shall be receipted for, as in the preceding article, he being allowed, however, a deduction of twelve and a half per cent. as a full allowance for wastage, leakage, and damage, of whatever nature, excepting only such losses as may be occasioned by fire, water, an enemy, or by the troops of the United States.

Fourth. That the party of the second part shall issue all the supplies as aforesaid, to the troops at the several posts, in rations to consist as follows, viz:

Eighteen ounces of bread or flour.

One pound and a quarter of beef, or three quarters of a pound of pork.

One gill of rum, brandy, or whisky.

And at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles to every hundred rations.

Fifth. That the said party of the first part shall pay or cause to be paid to the said party of the second part, one cent for every ration which he shall issue as before recited, as a full compensation for his trouble and expense in issuing the same.

In witness whereof, the said H. Dearborn, in behalf of the Secretary of War, on behalf of the United States, hath hereunto subscribed his name and affixed his seal; and the said Elbert Anderson hath hereto set his hand and seal the day and year last above written.

H. DEARBORN. [L. S.]

ELBERT ANDERSON. [L. S.]

Signed, sealed and delivered in the presence of—

WAR DEPARTMENT, *November 27, 1812.*

SIR: In my letter of October 29th, you were assured that arrangements would be made with the contractors for giving the deposits of provisions which had been required of them. Major Anderson and others expressed a willingness to make the issues, and we believe you should find it for the public interest to employ them in preference to other agents. You are authorized to fill the blanks attached to their contracts accordingly.

I have the honor to be, very respectfully, sir, your ob't servant,
W. EUSTIS.

Major General HENRY DEARBORN, *Plattsburg.*

No. 11.

Memorandum.

It would give me pleasure to pay Mr. Anderson's claim, as it is now settled by the accountant; and the difficulty in respect to the payment does not arise from the want of funds at the Treasury, but from the want of an adequate appropriation. The Secretary of War pressed upon the committee of Congress a larger appropriation before the adjournment, but he could not obtain it.

My letters and overtures, respecting the payment of Mr. Anderson's claim, are all correct. When they were written I had not entered the War Office, and certainly I was unaware of the state of the army appropriations. Hence, when I said that the claim could be paid or funded at par, or at the rate of 95 per cent., I could only mean that it should be legally paid or funded, as far as there was an appropriation to authorize it.

But the act of Congress respecting the issue of treasury notes has been misunderstood. It does not authorize the payment of claims in those notes beyond the amount of actual appropriations. It only authorizes a payment in those notes where the debt is ascertained, and an appropriation for paying the debts has been made by law. Mr. Anderson's debt is ascertained; and it could be paid in treasury notes, or it might be received in subscription to the loan, but for the single constitutional reason, there is no law that appropriates money to pay it, the general appropriation being exhausted.

An effort is making in a lawful manner to enrich the appropria-

tions, and the department may be able not only to subsist the army for the current year, but to pay off at least a part of the arrearages. On this ground, however, nothing is meant to be promised in Mr. Anderson's case, more than in numerous other cases, greater in amount, if not greater in hardship.

JUNE 6, 1815.

No. 12.

WAR DEPARTMENT, *June 20, 1815.*

SIR: On the 15th of March last, a warrant issued in your favor, agreeably to the certificate of the accountant of this department for one hundred and eighty-one thousand two hundred and forty-three dollars and thirty-seven cents, the balance found to be due to you on your late contract, the payment of which has only been delayed by the want of funds to meet this item of army expenditures.

The moment that an appropriation shall be made by Congress for the *subsistence of the army*, and which, no doubt, will be one of the first acts of the approaching session, your draft in favor of Mr. Fish for the above amount will be duly honored by this department.

I am, sir, very respectfully, your most obedient servant,

A. J. DALLAS.

ELBERT ANDERSON, JR., Esq.,

Late Army Contractor, New York.

No. 13.

[Extract.]

WASHINGTON, *July 11, 1815.*

DEAR SIR: The balances due you on the several settlements have been reported in the usual manner, but as the appropriation for the subsistence of the army is nearly exhausted, I do not think it will be practicable for you to obtain full payment of your debt until new appropriations shall have been made by Congress. But if full payment shall not be made before this time, I think there is no doubt but Congress will provide for the indemnification of the creditor, and especially where essential services have been faithfully rendered.

With great respect and esteem, I am, dear sir, your most obedient servant.

TOBIAS LEAR.

ELBERT ANDERSON, Esq.

No. 14.

TREASURY DEPARTMENT, *August 23, 1815*

SIR: Your letters have been received. You have been told explicitly that the appropriations for the War Department are not

sufficient to cover all the demands upon it; but that as soon as the necessary arrangements can be made, a part of your demand will be paid.

I am, sir, your obedient servant,

A. J. DALLAS.

Mr. ELBERT ANDERSON, *New York.*

No. 15.

TREASURY DEPARTMENT,
Register's Office, September 1, 1815.

At the request of the Secretary of the Treasury I have transmitted by this day's mail, in a package to your address, fifty-six thousand seven hundred dollars in treasury notes, numbered and lettered as follows: No. 528 *a* 716, letters *a*, *b*, and *c*; 567 notes, of \$100 each, \$56,700.

The duplicate receipts herewith enclosed you will please to sign and return to this office.

I am, very respectfully, sir, your obedient servant,

JOSEPH NOURSE.

ELBERT ANDERSON, Esq.

NEW YORK, *September 5, 1815.*

I herewith have the honor to enclose you the duplicate receipts required by your letter of the 1st instant.

I have the honor to remain your abedient servant,

ELBERT ANDERSON.

JOSEPH NOURSE, Esq.,

Register Treasury United States.

No. 16.

DEPARTMENT OF WAR, *March 23, 1826.*

SIR: Agreeeably to the request made by Mr. Cambreling to cause you to be furnished with a statement of what seems to have been paid for interest and damages on protested bills of exchange under the decision of the Secretary of War, of January 27, 1816, and what allowances have been made by the department for casks, boxes, &c., I transmit herewith a report of the Third Auditor, which furnishes the information required.

I have the honor to be your obedient servant,

JAMES BARBOUR.

ELBERT ANDERSON, *Washington City.*

No. 17.

DEPARTMENT OF WAR,
Accountant's Office, October 20, 1814.

SIR: I have received your letter of the 17th with its enclosure. The adjustments of your accounts as late contractor, cannot, from the great pressure of business, be taken up at this time. When it shall be practicable to enter upon the subject, you will be informed.

Respectfully, your obedient servant,

TOBIAS LEAR.

ELBERT ANDERSON, Esq.

No. 18.

DEPARTMENT OF WAR,
Accountant's Office, March 14, 1815.

I certify that there is due to Elbert Anderson the sum of one hundred and eighty-one thousand two hundred and forty-three dollars and fifty-seven cents, being the balance of his account for supplies furnished under his contract dated February 25, 1813, from June 1, 1815, to May 31, 1814, the period contracted for.

TOBIAS LEAR.

\$183,243 57. No. of the warrant, 2,247.
 True copy.

GID. DAVIS, *Clerk.*

THE SECRETARY OF WAR.

No. 19.

DEPARTMENT OF WAR,
Accountant's Office, March 14, 1815.

SIR: Your account for supplies furnished under contract dated 25th February, 1813, has this day been adjusted, and a balance found due you thereon of one hundred and eighty-one thousand, two hundred and forty-three dollars and fifty-seven cents, which sum has accordingly been reported to the Secretary of War for payment.

The aforementioned balance differs from your statement, in a sum of \$84,865 45, which is fully explained in a statement of differences herein enclosed for your government.

I am, with respect, sir, your obedient servant,

TOBIAS LEAR.

ELBERT ANDERSON Esq.

No. 20.

DEPARTMENT OF WAR.
Accountant's Office, March 10, 1815.

SIR: Your account for supplies furnished under contract dated 7th November, 1811, has this day been adjusted, and a balance found due

thereon to the United States of thousand eight hundred and thirteen dollars and thirty-one cents, which sum will be carried to your debit in account under contract of 25th February, 1813.

The aforementioned balance differs from your statement in a sum of \$27,940 63, which you will find fully explained in a statement of differences herein enclosed for your government.

I am, with respect, sir, your obedient servant,

TOBIAS LEAR.

ELBERT ANDERSON, Esq.

No. 21.

WAR DEPARTMENT, *October 31, 1814.*

SIR: Your letters of the 26th and 27th instant have been received. As soon as your accounts are acted upon and settled by the accountant of this department, in the accomplishment of which no time will be lost, any balance which may be due you shall be promptly paid.

It is impossible to accept or pay your drafts until a settlement of your accounts is made.

I have the honor to be, respectfully, sir, your obedient servant,

JAS. MONROE.

Mr. ELBERT ANDERSON,

Late Contractor, New York.

No. 22.

DEPARTMENT OF WAR, *July 10, 1815.*

SIR: It appears from a report made by the accountant of this department, dated the 27th of June, that there is due to Elbert Anderson the sum of fifty-six thousand seven hundred and fifty-six dollars and forty-two cents. Forty thousand dollars of which can immediately be paid, by a draft on Baltimore, and the residue will be paid whenever Congress shall make the necessary appropriations.

I have the honor to be, very respectfully, your obedient servant,

GEO. GRAHAM.

ELBERT ANDERSON, Esq., *New York.*

No. 23.

WAR DEPARTMENT, *July 12, 1815.*

SIR: It appears from a report made to this department by Colonel Lear, bearing date the 10th of July, 1815, that there is due you seven thousand three hundred and eighty-nine dollars and thirty-four cents,

on account of your contract, which will be paid so soon as Congress shall make the necessary appropriations.

I have the honor to be, with great respect, your obedient,
GEO. GRAHAM.

ELBERT ANDERSON, Esq.,
New York.

No. 24.

TREASURY DEPARTMENT,
Third Auditor's Office, December 4, 1856.

SIR: In compliance with your request of the second instant, I herewith transmit a copy of the statement of differences arising on a settlement made March 10, 1815, of the accounts of Elbert Anderson, for supplies furnished under his contract with the United States, dated November 7, 1811.

Very respectfully, your obedient servant,

ROB'T J. ATKINSON, *Auditor*

E. E. ANDERSON, Esq.,
Willard's Hotel, Washington, D. C.

No. 25.

Differences arising on settlement of the account of Elbert Anderson, for supplies furnished under his contract dated 7th November, 1811.

Balance due the United States per Mr. Anderson's statement.....	\$29,753 94
Balance due the United States per official statement.....	1,813 31
Difference	<u>\$27,940 63</u>

Arising as follows:

This sum is credited by Mr. Anderson, under date of 10th May, 1813, which is not charged on the books of this office	\$50,000 00
To which add amount of errors found in his favor on settlement of 27th May, 1813, as stated in an account of differences sent to him	\$2,604 95
Amount of errors in his favor on settlement of 6th July, 1813, per statement of differences herewith.....	142 14
Amount of errors in his favor on settlement of 12th May, 1814.....	98 67
	<u>2,845 76</u>
	<u>\$52,845 76</u>

From which deduct amount of errors and overcharges made by him, as stated in account of difference filed with settlement of 27th May, 1813, viz:

Amount of rations issued to marines.....	\$50 40
Error in general abstract for August, 1812.....	9 53
Do. do. do. September, 1812....	40 88
Do. do. do. October, 1812.....	19 32
Do. do. do. November, 1812....	111 22
Do. do. do. December, 1812....	85 63
Do. do. do. January, 1813.....	6 17

\$323,15

Amount of errors and overcharges
as stated in account of difference
with settlement of 6th July, 1813

Due for due bills..... \$98 82

101 57

200 39

Amount due per difference with
settlement of 12th May, 1814.....

45 07

Do. do. do. 155 12

Do. do. do. 157 02

Do. do. do. 10 64

367 85

Overcharged in general account,
barrels, &c., for deposit at Sandy
Hook, twice charged.....

\$99 92

Amount disallowed on settlement of
10th October, 1812, is inadmissi-
ble.....

37 10

The charge made by him for errors
found in his favor on settlement
of 27th May, 1813, is already
noticed above.....

2,604 91

2,741 93

\$3,633 32

Amount short credited by him in provisions
received from deposit.....

15 40

Amount of barrels, casks, &c., charged by
him for deposits, is disallowed.....

21,386 41

25,135 13

\$27,710 63

Add amount of payment made by him to James Lowrie, for
storage of deposits in New York, between 6th March,
1812, and 3d February, 1813, which is not charged by
Mr. Anderson in his statement, (see voucher No. 5).....

231 08

\$27,941 71

NEW YORK, *May* 16, 1815.

SIR: I have the honor to forward to your address, per the charge of Mr. James Thorne, my account inclusive with the United States since the report of the 14th of March, for a further demand of ninety-nine thousand three hundred and thirty-six dollars and ninety-six cents, arising as follows, from the suspension of former accounts of captured provision for the want of deposition which are now furnished:

Amount, vouchers No. 173, 1, 2, 7, 8, 11, 12, 13, 14, 15, 16, 17, and 22.....		\$35,680 44
Ditto, No. 99.....		3,051 32
Abstract A, of whiskey at Sackett's Harbor.....		4,248 72
Amount of hides, tallow, &c., lost and captured by the enemy on the Niagara frontier, and which have not been included in former abstracts. See vouchers, &c.		9,044 00
Amount transportation from deposit, provisions on shores of Lake Ontario and inland, by orders on file and vouchers herewith.....		25,565 24
		<hr/> 77,589 72
Casks, boxes, &c., suspended in contract dated November 7, 1811. See report of difference of the accountant.....	\$21,486 41	
From which deduct amount, casks, boxes, &c., received back for issue under the aforesaid contracts. See account "B" of credit forwarded July 30, 1814.....	7,514 11	
And "B" No. 1, 2, 3, 4, 5, forwarded August 22, 1814.....		13,972 30
Casks, boxes, &c., suspended on contract dated February 25, 1813. See report of differences.....	25,097 80	
February 25, captured at Black Rock, Buf- falo, &c., suspended.....	778 00	
February 25, on board schooner Enterprise	256 41	
	<hr/> 26,112 21	
From which deduct amount, casks, boxes, &c., received back from issue on Lakes Champlain, Ontario, New York, Sag Harbor, &c., from June 1, 1813, to June 1, 1814. See vouchers of credit B.	14,175 96	
		<hr/> 11,936 33
		<hr/> 103,498 35

Credit by amount of provision received from A. Van Sanborn, Utica deposit, as not credited in former account, the receipts not having come to my knowledge before, viz:

303 barrels flour, 52,790 rations, 7½ cents.....	\$3,959 25
Barrels containing rations, 38 cents.....	115 14
Sales 24 barrels damaged flour of Soders's deposits by certificate N. Merrell.....	87 00
	<hr/>
	4,161 39
Balance due E. Anderson.....	99,336 96
	<hr/>
	103,498 35
	<hr/> <hr/>

All of which is respectfully submitted for your examination and official report.

With sentiments of great respect, your obedient servant,
ELBERT ANDERSON.

TOBIAS LEAR, Esq.

Accountant's office, Washington City.

NEW YORK, *December 26, 1814.*

DEAR SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, and it gives me great pleasure to learn that my accounts are in train for settlement.

The delay that has existed, has not only created great solicitude of mind, but it has been attended with considerable pecuniary embarrassments to myself and friends; so much so that I had made my arrangements to have proceeded to Washington in the course of the preceding week; but unfortunately I have since been confined to my room with severe inflammation in my knee joint.

I must now, sir, return you my thanks for taking up my accounts, and I flatter myself no interruption will be given to their final adjustment. Mr. Robert M. Penoyer, who has been in my office as principal clerk, will hand you this letter with some additional vouchers under contract dated November 17, and February 25, which you will do me the favor to cause their examination with the other documents.

Mr. R. M. Penoyer has entertained a wish to receive some public employment. He proposes to offer a bid for the subsistence of the army within the State of New Jersey on his own account. Should he do so, on terms favorable to government, I recommend him as a person well qualified for the station of a contractor, and as an honest and upright character. His friend, John N. Luff, whom he proposes as one of his sureties, is a gentleman of great resources and solid property.

With sentiments of great respect, I remain, sir, your most obedient servant,

ELBERT ANDERSON.

Hon. TOBIAS LEAR.

IN THE COURT OF CLAIMS.

No. 4.

On the petition of HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, deceased.

Brief of the U. S. Solicitor.

The petitioner claims the sum of one hundred and forty-nine thousand three hundred and sixty-six dollars and ninety-seven cents principal, and about four hundred thousand dollars interest, making a total of about \$550,000. The claim originated in two contracts with the War Department by said Elbert, for the supply and issue of rations to the troops of the United States, and for supplying provisions at fortified places and military posts; one dated 7th November, 1811; the other dated 25th February, 1813, and, as alleged, "is partly for amounts actually due him by the terms of said contracts, partly by way of compensation for articles furnished and services rendered beyond the requisitions of said contracts, and partly by way of indemnity for alleged breaches of the covenants therein contained by the United States."

The claim is set forth in the petition under eight heads; the 1st and 4th embracing each several sub-divisions.

1st. All the sub-divisions of this head are for compensation for casks, barrels, &c., in which the rations furnished were contained.

a. The first sub-division is for casks, &c., containing provisions furnished under the contract of 1811, which casks, &c., it is alleged, were retained and used by the United States; and, "it is further alleged, that by the universal practice of the United States, under previous contracts, and by various contemporaneous decisions of the heads of department, the United States were bound to allow separate compensation for such casks and packages, and that the contractor accordingly claimed an allowance therefor." He further alleges that the United States refused, nevertheless, to pay for them, and he now claims as the value thereof the sum of \$13,972 30, with interest under the contract in question. These supplies were to be delivered "at all and every place or places where troops are or may be stationed, marched, or recruited, within the limits of the State of New York, (Niagara and its dependencies excepted.')" Neither time, place, nor person is named in this petition with regard to the delivery of these casks, &c. This is indispensable to enable the officers of the United States to inquire into the facts and prepare to meet the allegation.

Then as respects the custom of making separate compensation for them. That is not alleged to have prevailed with respect to contracts *similar* to this. The universal practice under previous contracts will give no sanction to this claim, unless the contracts were similar to this.

We may infer from the allegations of the petition, though it is not distinctly stated, that the casks in question were delivered at the posts or depots under the provisions of the third article of the contract, and that he did not issue them to the troops himself, as provided for in the supplementary agreement. This inference arises, because it is

alleged that the provisions and casks so containing them were delivered, and "never were returned to the said contractor." He did not, therefore, issue the provisions as provided for in said supplementary agreement, otherwise the casks would have been returned to him, and he would have been allowed twelve and a half per cent. for leakage and wastage, and one per cent. in addition for issue from the public deposits. He therefore received, for merely depositing in casks at the several military posts under this contract, at the rate of $13\frac{1}{2}$ and 14 cents per ration, which is all he would have been entitled to if he had issued the rations himself before they were deposited in the public stores; and it is under such circumstances, when, instead of being called on to issue the rations in detail to the troops, he is merely required to deposit a supply of them at the same price, and is thus saved all the expense and labor and risk of issuing them, that he claims for the casks, &c., which for his own convenience he thinks proper to deliver them in, without alleging that he gave any intimation at the time to those who received them that he would claim them afterwards, or showing that he then or afterwards demanded them of the officer in charge of them.

Regarding this contract, and the circumstances attending the execution of it, as unlike the previous contracts under which the custom is said to have prevailed, of paying separately for those articles, and as depending altogether on themselves, and giving the ordinary and natural construction to the acts of the parties, no one would conclude that a contractor under such circumstances was entitled to additional compensation, when, instead of being required as he might have been to issue the provisions in rations, consisting of fractions of a pound of meat, bread, and flour, and whiskey by the gill, and vinegar and other things in still smaller proportions, the provisions are accepted in barrels and casks. The advantage is so manifestly on the side of the contractor by this arrangement, that when he gives no notice of a claim for the boxes, and sends no one to demand them afterwards, it is a legitimate conclusion, from a consideration of the whole transaction, that he was only too glad to get rid of his provisions in casks and boxes, and that the idea of a charge for these things was altogether an after-thought.

He says the boxes, &c., were used and retained by the United States. Doubtless these were used and retained to contain the provisions and supplies till issued, as he would have used them or something else for the same purpose. But such using and retaining, as well as the issuing of the rations, was for the benefit of the contractor. If he had objected at the time, both this retaining and using the casks, as well as issuing of the supplies contained in them, might have been exacted of the contractor.

But whether it is apparent or not from the statement of the petitioner, that the arrangement was for his advantage, he would not be entitled to more than the stipulated price in his contract, on account of a variation from it in which he acquiesced without giving notice at the time, or saying or doing anything from which such notice is implied, that he claimed anything on account of the change. Without something of this sort, the variation would be treated either as im-

material or as made by consent for the mutual convenience of the parties.

But, as already observed, this claim grows out of supplies furnished in pursuance of the third article of the contract providing for furnishing *supplies at fortified places and military posts*, in which article it will be observed the contractor is required to furnish supplies "in such quantities as shall not exceed what is sufficient for the troops to be there stationed *for the space of three months in advance*, in good and wholesome provisions, consisting of *due proportions* of all the articles forming the ration."

This is a distinct provision from that relating to the supply and issue of rations. It contemplates the deposit of supplies in large quantities in advance but in due proportion, and thereby enabling the government to preserve the uniformity in the rate of payment, but not necessarily to be issued by the contractor; but, when so issued, he is to be paid under the supplemental agreement separately for that service. Such deposits could not be made or preserved without casks and boxes; and the contractor who undertakes unconditionally to make them, undertakes to provide everything necessary to accomplish that purpose, and the conditions only are excepted which are specified in the contract. He has taken care to stipulate that the government shall provide store-houses, escorts, guards, &c., (see arts. 7 and 8,) but not that the government shall provide or pay for casks, &c., to hold the supplies to be deposited by him in these store-houses.

As such things were essential and must be provided, and according to the account of the claimant were costly, it is not to be presumed they were not included in a contract so carefully considered.

Again: Of what use were such articles to the government after the supplies were taken from them, and what is to be the standard of value—the cost to the contractor, or the value of the old casks and boxes at the frontier posts in the wilderness on the St. Lawrence? If the latter, the contractor will take little by the allowance; and yet, certainly, if entitled to anything, it is only to the value of the articles after they had served his purposes.

If the court should consider the language of the petition as equivalent to an allegation that the government universally paid for casks, &c., separately under similar contracts, and under like circumstances—which is neither the allegation nor the fact, as I am informed—I should nevertheless insist, on the ground above stated, that the government was under no obligation to make such payment under this contract; and that the allowances heretofore made under similar contracts were illegal.

No. 1, *b*, is a claim similar to the foregoing, under the contract of February 25, 1813, without any allegation respecting the practice of the government in relation to previous contracts to support the claim. Such an allegation in respect to it would be contradictory of the statements preceding it. In addition, therefore, to all the objections against item No. 1, *a*, we have the fact admitted, that, under such contracts after 1811, the government refused to pay for these casks, &c.

No 1, *c*, is a claim for the destruction of these articles, under the 6th article of the contract providing for the payment of losses in

articles necessarily used in the transportation of provisions, alleging that these articles were so necessary, and that a certain amount were destroyed; but when, at what place, by whom, or how, is not stated with any degree of certainty or particularity.

The language of article 6th, relied on in support of this item, evidently referred to what is known to quartermasters and others as transportation—that is, wagons, horses, &c.

In one of the accounts rendered by Mr. Anderson, as may be seen in the proceedings referred to in the petition, he charges for certain hides which were destroyed by the enemy on the Canada frontier. The animals had been driven there, butchered, and fed to the troops; and as they could not have been driven without their hides, this loss was supposed to come within the article securing him against the loss of property used in the transportation of provisions. But this item was small, and the argument being suggestive of ridiculous ideas, it has been abandoned. It is, however, illustrative of the present claim, and I cannot distinguish between the merits of the two. If one is maintainable, both are, in my judgment; nor do I think the difference in value between the casks and boxes and the hides, at the place where they were destroyed, would be in favor of the casks and boxes.

No. 2. This item is for damages amounting to \$20,000, on protested bills of exchange, drawn 27th October, 1814, by the claimant on the Secretary of War, and interest from the date of protest, on the ground “that by the terms and usage of his contract,” he was authorized to draw, and he is entitled to the damages “by the practice of the United States in the case of protested bills.” I shall make no question on this till proof is made of the allegations.

No. 3 is for discount on treasury notes. The allegation is, that he was compelled to receive pay in these notes at the time, on 5th September, 1815, and on 16th January, 1816, greatly below par value, and that he lost \$22,214 20 thereby.

The 8th section of the act of the 24th February, 1815, authorizing the issue of treasury notes, expressly forbids what is here charged against the officers of the government. By that section such notes can only be issued to “such persons as shall be *willing* to accept the same in payment.

How the contractor was compelled to receive the notes is not stated. But as the law puts it altogether to his election to receive them or not, the government cannot be made responsible for any compulsion put upon him, which, so far from sanctioning, it expressly forbids. If, therefore, the compulsion was the work of the public officers, it was their own act, not within the authority of law, and one for which they were responsible. See Swartwout’s case, 10 Peters, 95; 9 Clark & Finnelly’s Rep., 279.

No. 4, *a b*, are both on account of the enhanced price of whiskey, (an article of supply contracted for,) alleged to have been caused by the government, after making the second contract, by the passage of the act of 24th July, 1813, laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814. He alleges that in consequence of this act he was compelled to pay

\$45,709 51 increased cost, or at the rate of 14½ cents per gallon for the whiskey furnished under said contract.

The question involved in this claim has been decided by the Supreme Court in the cases of *Providence Bank vs. Billings and Prettman*, 4 Peters, 514, and *Charles River Bridge vs. Warren Bridge*, 11 ib., 545. In the first of which, in reference to a conflict between the taxing power and a contract, it is held that government contracts with individuals are made subject to the taxing power of the government. And in the last case the principle is carried still further, and it is held that such contracts are made subject to the exercise of any and all the political powers of the government.

The first case and this claim are in all respects the same, both being cases seeking exemption from taxes in virtue of a contract with the government, on the ground that, having agreed in relation to certain specified matters, the government had no right to impose any further burdens than such as were contained in the contract. But such contracts are considered as if made between individuals in respect to general legislation, and that, so far as concerns contracts made with individuals by executive officers, is perfectly fair and just. Why should not the contractor in this case, for instance, contract with the Secretary of War for the supply of provisions for the army, as with individuals, subject to such legislation as the wisdom of Congress shall dictate for the good of the country?

There are other objections to this claim. It is manifest that the price of the article was affected to some extent otherwise than by the tax, as a comparison of the rates on the still with alleged variations in price will show. How much the tax affected the price of whiskey in 1814 would be a most vexed question at this day as in it are involved a multitude of considerations, as a supply and demand, &c. But what amount should be allowed the claimant would be still more perplexing, as his contract embraces the supply of various other articles; and it is probable that if the effect of the tax was to enhance the price of whiskey, it must have diminished the price of beef and breadstuffs, and other articles in the contract, yet more considerably.

With respect to items 5, 6, 7, and 8, I shall offer no objections till the proof comes in.

I shall read at the hearing some adverse reports of committees, the report of the Secretary of War, dated August 12, 1824, and the remarks of the Third Auditor on statements of differences, all to be found among the congressional papers referred to.

M. BLAIR.

IN THE COURT OF CLAIMS.

ON THE PETITION OF ELBERT ANDERSON'S ADMINISTRATOR.

Brief of the United States Solicitor.

The petition states that deceased was an army contractor during the years 1812-'13, and '14, under two contracts, one dated November 7, 1811, and the other dated February 23, 1813.

Twelve different claims are presented in the petition, but the evidence as offered, in the opinion of the petitioner's counsel, supports only four of them, and therefore the others are abandoned.

Those now presented are—

1. For the value of certain casks, &c., in which a portion of the rations furnished under both contracts were contained; which casks, &c., it is alleged were not returned.

2. Damages for the non-acceptance and non-payment of two drafts.

3. For a balance on the settlement; because, although the amount was paid in treasury notes, they were received at their nominal value, which was more than their true value.

4. For the difference in the price of the whiskey supplied under the second contract, caused by the act of Congress of the 24th of July, 1813, taxing stills. (3 Stat., p. 42.)

I. *The claim for casks, boxes, &c.*

This claim is stated in the petition as follows:

“That by the terms of said contract, dated the 7th November, 1811, the said Elbert Anderson, deceased, agreed with the United States to furnish provisions for the army of the United States in and adjacent the State of New York. That the said provisions were to consist of rations to be issued to the soldiers, and that the contents of each ration are specifically enumerated in said contract. That the said contractor, *in addition* to the said provisions, did furnish to the United States a large number of casks and packages, boxes and barrels, wherein the same were contained, and that the said casks and packages were retained and used by the United States, and never were returned to the said contractor. That the value of the said casks and packages, so furnished and retained by the United States, was \$13,972 30.

“That by the universal practice of the United States under previous contracts, and by the various contemporaneous decisions of the heads of department, the United States were bound to allow separate compensation for such casks and packages, and that the contractor accordingly claimed an allowance therefor.

“That the United States have never allowed the said contractor any compensation for the casks, &c., so furnished to and used by them; and this claimant, therefore, asks compensation and indemnity of the United States in the said sum of \$13,972 30, together with interest on the same from the date at which the said claim accrued.”

Similar averments are made respecting certain casks, &c., furnished in executing the contract of 25th February, 1813, for which compensation is claimed to the amount of \$10,921 90, making the claim on account of these articles in the whole of \$24,894 20.

The proof offered to show that such articles were furnished, consists, first, of certain accounts which the witness Penoyer testifies are copies of those forwarded to the accounting office of the War Department, on which accounts the government is charged with sundry casks of pork and beef, barrels of flour, casks of whiskey, boxes of candles, &c., &c., deposited at various military stations; and

secondly, of a paper which the same witness testifies is in the handwriting of one John Abbott, who, Penoyer says, was at the time a clerk in the accountant's office. Penoyer further testifies, that in this paper, which purports to be a statement of differences between the charges of Anderson and the allowances of the accountant under the second contract, there is no disallowance of any charge made on account of the meat, &c., forming the component parts of the rations claimed to have been deposited, but only of the casks, &c., in which those articles were contained.

This statement of differences admits nothing in respect to the delivery of the casks, but because it admits the delivery of the meat, &c., which is usually transported and delivered in such articles, it is inferred that the casks must have been deposited in the public store houses. If this be conceded, the statement applies only to the deposits made under the contract of 1813; but the statement of differences, and the settlement to which it refers, only admits the deposits of the meat, &c., forming component parts of rations with which the government is charged by allowing that charge, but rejects the charge for casks, &c., and therefore does not admit the deposit, or any other fact essential to create the liability of the government for casks, &c.

But it is argued that the admission of the receipt of the contents of the casks, &c., carries with it a presumption that the casks were also deposited, because it is not likely that the process of transferring the contents to other vessels was resorted to; and therefore, from the nature of the transaction, the admission as regards the contents admits the deposit of the casks, &c., and puts us on the proof of the return of the casks. The claimant relies, therefore, not upon any distinct admissions or proof of the fact in question, but asks the court to infer its existence from the nature of the transaction. But when the court considers the nature of the transaction, the mere fact that certain casks, &c., belonging to Anderson, containing the rations which he was under contract to supply, were left in the public stores to remain there until the rations were issued, does not prove that these casks, &c., did remain in the stores after that time, or were improperly withheld from him by the public officers, and affords no presumption whatever that they were so withheld; and that is what is charged by the claimant. The sort of possession by the public storekeepers, which is to be inferred from the facts in proof, was a rightful possession. To charge the government, supposing it could be charged, for any unauthorized act on the part of such officers in improperly retaining such casks, something more must be shown. It is not the case of a sale and delivery, where it is enough to show the delivery to put the vendee on the defensive. On the contrary, it is insisted that the casks were not included in the contract, and were not sold, and Anderson's property in them continued after the deposit. In such a case further evidence is indispensable to show the conversion of the property by the United States. The transaction is properly characterized by claimant as a bailment, and it is of that kind called in the books a deposit, which is defined by Justice Story p. 47, to be "a bailment of goods to be kept by the bailee without

reward, and delivered according to the object and purpose of the original trust." Admitting, for the sake of the argument, that the casks were the property of Anderson, and looking to the contract for the nature of the trust imposed on the United States with respect to them whilst in the public stores, we shall find that they were there wholly for Anderson's benefit and convenience; for, by the terms of the contract, he was bound to make and keep and "account for" the deposits, and to transfer them from post to post, if required; the only responsibility assumed by the United States being to allow $12\frac{1}{2}$ per cent. for wastage, leakage, and damage of whatever nature, excepting only those occasioned by fire, water, an enemy, or the troops of the United States, and to supply storehouses. (3d and 8th arts. original, and 3d art. supplemental agreements.)

There is no evidence offered by the claimant from which the court is authorized to infer that this trust was ever violated by the United States. The receipt of the casks is no violation of it, but is merely evidence of its creation, and the presumption of law, in the absence of proof to the contrary, is, that it has been faithfully performed.

In this state of the proof, it is wholly unnecessary to dwell on other considerations, but a glance at a few others may serve to illustrate the subject.

It is alleged in the statement of this claim above given from the petition, "that by the *universal practice of the United States under previous contracts*, and by the various contemporaneous decisions of the heads of departments, the United States were bound to allow separate compensation for such casks and packages." This averment, it was maintained by the claimant's counsel in the argument on the petition, was an averment that by usage, in reference to such contracts, the government was bound to pay for casks, &c., in cases like the present. The only proof offered in support of this allegation is of an allowance made by Mr. Monroe to Mr. Byers, on a contract of a subsequent date to those under consideration, the propriety of which allowance Mr. Monroe himself undoubtedly questioned, as appears by his memorandum on the order, in which he says he was induced to make it by equitable considerations, thus showing that the case was not according to usage, but was exceptional, and not to be drawn into precedent. And so it was expressly declared by Mr. Calhoun, when it was cited in support of this claim, when he said that no other instance had ever occurred in which such an allowance had been made. A practice had grown up under the contract system of paying the contractors for the casks, &c., delivered to the quartermaster's department to be issued to troops on the march. But even this he considered objectionable, and an allowance under it only justifiable because it was a usage. But this custom did not extend to deposits made at stations, forts, &c., and had never been so applied but in the exceptional instance of Byers, where, whilst the allowance made nominally for casks, &c., deposited, it was in fact made, as confessed in the memorandum of Mr. Monroe, on other considerations. No attempt is made to refute this statement of Mr. Calhoun. No instance of the making such an allowance is shown either to Mr. Anderson himself, who, it appears, by exhibit No. 1 to Penoyer's deposition, had been

an army contractor for many years before making the contract of 1811, or to any other contractor. The allegation of such usage is therefore not only unsupported, but is disproved.

Mr. Calhoun may be wrong in his opinion respecting the right of the contractor to the pay for the casks, &c., turned over to the Quartermaster's department, containing rations to be issued on the march; and also in the opinion he expresses that the property in the casks was incident to the rations, and passed to the United States with the rations. But this erroneous construction of the contract, if it be so, does not affect his testimony as to the fact that the usage was not to pay for casks, &c., deposited. The usage he speaks of is perhaps inconsistent with his opinion as to the property in the casks, but is not at all inconsistent with the usage not to pay for casks deposited, or with the relations of the parties as above considered. For as the contractor was not bound to issue rations on the march, or to transport them with the troops, so as to enable the commissary to issue them, but only to deposit them at certain stations, and to issue them at such stations when required, when it became necessary to transport provisions from such stations to feed the army on the march, the government had no right to take the casks of the contractor for such a purpose, without paying him for them, especially as in most cases they would be emptied and left by the road side, and they were therefore bought by him. Whereas, when issues were made at the stations, whether by the contractor himself or his successor, or by the commissary, no use was made of the casks not contemplated in his contract and assented to by himself, and therefore there was no necessity to buy the casks of him. The customs of the department are therefore strictly in accordance with legal principles, and there is no proof whatever that there was the slightest departure from these customs and principles in Anderson's case.

There is no evidence tending to show that Anderson was prevented from removing any of the articles in question from the storehouses, after the purpose had been effected for which they had been left there, or that any other use was made of them by the government but that for which he had left them. There is nothing, indeed, to repel the presumption that he obtained the actual possession of them all in due time, but his naked assertions to the contrary; and this assertion has always been made without any statement which would attach any blame or liability to the government or its officers for his failure to receive them.

But inferring that the government was liable to him for the price of the articles on the delivery of them, unless it was alleged and proved that they had been returned to him, he has never averred any request or demand for them at the stations where they were emptied, within any reasonable time after they had been emptied, or any neglect or refusal on the part of the officers of the government to deliver them to him on such request.

But if there had been such an allegation, and proof to support it, this would not have rendered the government responsible. Because, if the contractor had a right to the casks when emptied, and the officer had violated his rights in refusing to surrender them, no sanction

by the government can be implied to their conduct in this respect, so as to make their *laches* the *laches of the government*, and their *conversions* the act of the government; for laches cannot be imputed to the government. (U. S. *vs.* Kirkpatrick, 9 Wheat., 720; U. S. *vs.* Nicholl, 12 ib. 505; U. S. *vs.* Vanzandt, 11 ib. 184.) All of these were cases in which it was sought to make the government responsible for the supposed misconduct of officers. See also the case of Cassius M. Clay decided by this court.

But even if the court should be of opinion that the claimant was entitled to payment for the casks, there is no evidence on which the court could estimate the damages. The value of new articles of the kind might be found out in the city of New York; but these were old, and no doubt damaged from being transported to remote frontier posts, over bad roads, where there was no market for articles of the sort. Nothing is shown in the evidence as to the condition of the articles in the places where they were left, or indeed anything relating to their value but the first cost in New York. Any finding on this point, therefore, must be purely guess-work. And again, as the number of these articles shown by the abstracts with which the United States is supposed by the claimant's witness Mr. Choate, to be chargeable, I confess my inability to understand from the papers produced how he arrives at his conclusions, and he gives no explanations.

II. *Damages for the non-acceptance and non-payment of the two drafts.*

This claim is stated in the petition as follows:

"That by the terms of both the above-mentioned contracts, to wit, by the sixth article of the same, the United States undertook and agreed as follows:

"And that if any balance shall in any settlement of the accounts of the said Elbert Anderson from his heirs or executors be found to be due to him on account of the rations which shall be supplied pursuant to this agreement, the same shall immediately be paid, and that no unreasonable or unnecessary delay on the part of the officers of the United States shall be given to the settlement of the accounts of the said Elbert Anderson, jun., his heirs, executors, or administrators. That during the months of July and August, 1814, the said contractor transmitted to Washington his accounts for rations issued under the aforesaid contracts; that by the said accounts he was then largely in advance to the United States, to wit, in a sum exceeding \$200,000. That on the 15th October, 1814, he transmitted to Washington a further account, showing a balance due him by the United States of \$263,004 55½. That during the months of July, August, September, and October, the United States refused or neglected to settle the said accounts so transmitted, and that the said delay in settling the accounts of the said contractor was unnecessary and unreasonable. That when the said accounts were finally settled, the balances due to the said contractor as aforesaid were found to be correct, and were paid to an amount exceeding \$200,000. That on the 27th day of October, 1814, the said contractor made two several drafts on James Monroe, the Secretary of War, as by the terms and usage of his con-

tract he was authorized to do, the one for \$150,000 payable at sight, and the other for \$50,000 at 15 days' date. That the said bills were not honored or paid by the United States, as they should have been, but were returned protested for non-payment. That the said Elbert Anderson was thereby subjected to great loss, and that his credit was much impaired, and that he claimed of the United States the usual percentage of damages allowed by the law merchant, and by the practice of the United States, in the case of protested bills; and that the United States have refused to allow the same; wherefore, the claimant asks that the said damages be allowed him to the amount of 10 per cent. on the amount of the drafts protested; that is to say, \$20,000, together with interest on the same from the date at which the said claim accrued."

This must be taken as an allegation that the United States had agreed to accept and pay bills under the circumstances stated, in order to sustain the conclusion that the non-acceptance and non-payment charged, subjected the government to the payment of the damages claimed. There is certainly no such undertaking in the *terms* of the contract. That stipulates only that payment shall be made on the settlement, and that the settlement shall not be unreasonably delayed. So that if the claimant was authorized to draw at all, it must be shown otherwise than by the *terms* of the contract. And the attempt was made to imply such authority from the fact that a number of drafts had been accepted and paid in less time after the receipt of the accounts than had elapsed after the forwarding of those accounts on which the drafts of 27th October, 1814, were predicated. But it is not shown that these payments were made on settlements. It is apparent, indeed, that these payments were made in advance of the settlements, and were advances which the contract contemplated. Anderson, having ceased to be contractor at the date of the drafts of 27th October, had no claim to the money except on settlement; and although he was on the most friendly footing with the accountant and Secretary, as evidenced by the letters in evidence, the fact that extensive forgeries had been detected in the vouchers forwarded with his abstracts, (see Ex. 3, p. 256,) and that both Generals Scott and Gaines had made charges affecting the correctness with which his agents had conducted the business, (Ib. pp. 247, 265,) and that General Gaines had even questioned the contractor's integrity, admonished the department to be careful not to let him overdraw, and made it proper to pass on *his* accounts before payment.

The right to do this was expressly reserved in the contract, and not here questioned. But it is argued that there was unnecessary delay in doing it merely because payments had been more promptly made before, without showing that any of such payments were made on settlements, or under similar circumstances. The statement that no other bills had been refused acceptance and payments is shown to be erroneous by the letters of the claimant in exhibit 3, where a correspondence is shown in reference to two other drafts which were refused payment, one dated 1st March, for \$150,000, (Ex. 3, pp. 215,) and the other 26th February, 1814, for \$87,500, (Ib. 231.) It will further appear, (Ib. 214,) that the contractor regarded the acceptance

of such drafts not as a right incident to his contract on the forwarding of his accounts even whilst he was engaged in making purchases, and before the expiration of the time of his contract, but as discretionary with the Secretary, and therefore, in the letter forwarding these accounts, he usually explained fully his financial condition to show the necessity there was to put him in funds for the sake of the public interest, and these representations and drafts he calls in the letter cited "feeling the Secretary's pulse," or merely sounding him, and not the demands authorized to be made, and to which, therefore, the contractor felt assured there would be but one response. And it appears as well by the letters in relation to the drafts of February and March, as in respect to those in October, written after the refusal, that the drafts were merely modes of application for money based on the accompanying accounts and statements addressed entirely to the sound discretion of the Secretary; because, although the contractor expresses his disappointment, or "scolds," as he expresses it to his associate Townsend, in these letters, he nowhere claims any damages on account of the refusal as for a breach of contract; but, on the contrary, as in his letter to Mr. Monroe, (p. 387,) he asks only for the settlement promised, and for the *balance* which shall appear on such settlement.

It appears, also, that the accountant, by letter of 20th October, and the Secretary, by letter of the 31st, informed him that no payments would be made till the settlement. These officers both speak of the delay as necessary and proper, and treat it as with the contract. And Anderson does not in his answers controvert this in any way.

2. But if it be assumed that there was authority to draw, and the Secretary bound to accept and pay, there would still be no foundation for the claim of ten per cent. damages, or for more than nominal damages.

It is not pretended the bills were negotiated, and that the damages claimed were paid by the contractor to the payee, and the "law merchant" does not ordinarily allow damages to the drawer which he has not paid. The only cases cited, on this part of the case, by claimant's counsel, are those of the United States *vs.* Bank of the United States, (2 Howard, 721,) and Rollin *vs.* Stewart, (25 English Law and Equity Reports, p. 341), have no application to this. The first was on a bill which had been made and negotiated by the United States, and the damages for non-payment were claimed by the bank as the *bona fide* purchaser and holder of the bill.

The case of Rollin *vs.* Stewart was a suit by a *trader* against a *banker* having his funds, who had refused to pay his checks. The court permitted the jury to give smart-money, because they were at liberty to infer merely from the relations of the parties that the *banker's* conduct was injurious to the *trader's credit*, and the smallness of the amounts for which payment was refused, was therefore an aggravating circumstance in the case.

In this case the defendant is not a banker, and the claimant is not a *trader*, and the amounts are not so trifling as to justify the conclusion, from the non-payment by even the party's banker, that the drawer was insolvent; and it was only on this state of the case

that damages could be given without proof of special injury, which is neither alleged on the petition, nor proved by the evidence in this case.

III. *For the depreciation of the treasury notes received by the contractor.*

This claim is stated in the petition as follows :

"That by the terms of the said contracts the United States undertook and agreed to pay for the said rations so furnished a certain price in money. That the contractor was compelled to wait ten months, from the period at which his accounts were tendered for settlement, before payment of the balances due by the said accounts was tendered to him, and that he was then compelled to receive the said payment in treasury notes, at the time of such receipt from 8 to 11 per cent. below par, and that he thereby suffered great loss, to wit, the sum of \$6,237, being 11 per cent. on \$56,700 received in treasury notes on the 5th day of September, 1815, at which date the said notes were 11 per cent. below par, and the sum of \$15,977 20, being the discount at $8\frac{47}{100}$ per cent. on \$188,631 91, received in treasury notes on the 16th day of January, 1816. That the said contractor never received any indemnity for the said loss, wherefore this claimant asks compensation of the United States in the sum of \$22,214 20, together with interest on the same from the date at which the said claim accrued."

The proof shows that treasury notes were not equivalent to specie on the 5th September, 1815, on the 16th January, 1816. The difference being in September about 9 per cent., and in January about 8 per cent., and that they were worth a premium on the New York bank notes, which actually constituted the currency or money at the time—specie being bought and sold as merchandise.

The act of February 24, 1815, (3 Stat., p. 215,) under which the notes in question were issued, authorizes "the said treasury note to be issued at the par value thereof in payment of services, of supplies, or of debts for which the United States are or may be answerable by law, to such person as shall be willing to accept the same in payment."

If it were an open legal question whether Anderson accepted payment in these notes willingly, having accepted them under this law, his application for them, which appears in his letter-book at p. 292, would leave no doubt about the fact; and it is well settled law that the acceptance of a note in payment of any account discharges the debt. (Sheehy v. Mandeville, 6 Cranch, 257; see also cases cited 2 Parsons, 134.) That was a case where the note was unpaid. When the notes and interest thereon have been paid in full as in this case, there is still less reason for saying there has not been full payment of the debt. This assumes that all contracts with individuals or governments for indulgence are invalid unless paid for at the market price of specie, and that when notes are given for debts, unless the notes will command the specie to the full amount of their face, the debtor is still liable for the difference, although he may subsequently have paid the notes in full.

The case of Cheever, for the relief of whose widow, Mrs. Huntington, an act was passed February 10, 1849, (9 Stat., 761,) and of Byers, for whose relief an act was passed March 3, 1823, are cited as precedents for the relief claimed in this case.

But the report of the Secretary of the Treasury, Mr. Spencer, in 1843, which is made part of the report of the House committee in favor of Cheever, shows that the acts in question were passed on entirely different considerations from any presented here. Mr. Spencer shows that Byers and Cheever, who were army contractors, to whom treasury notes were issued as advances on their contracts at their par value, informed the Secretary, Mr. Monroe, that, in consequence of the depreciation of these securities below the currency in use where their operations were to be made, they could not make use of them; and upon these statements the Secretary authorized Byers to sell the notes, and instructions were given to Cheever which Mr. Spencer demonstrates were in effect the same as those given to Byers. These were not cases of the payment of debts in which the notes were accepted willingly by Cheever and Byers; but, on the contrary, were cases where these contractors had informed the Secretary that they could not make use of the notes sent them at their par value, and where the sales made at less than the par of the currency were for account of the United States by contract with the Secretary of War.

Moreover, the loss refunded by the act of 1849, as shown by the account made by the Third Auditor, was not the difference between treasury notes and gold and silver, but only the difference between such notes and the current bank notes of New York, where Cheever had succeeded Anderson as contractor, and where both of them had dealt in bank bills as money, borrowing the notes of the banks to make their purchases on the credit of their contracts with the government. In Cheever's time it appears the treasury notes were not of equal value with the bank notes he borrowed, and it was this difference which he asked to be returned to him, and which was returned to him by the act cited. But in Anderson's time the treasury notes were worth more than the bank notes which he borrowed, and, on the principle of Cheever's case, he ought to return to the government the premium of one and a quarter per cent. received on the treasury notes issued to him.

The whole argument for this item rests on the notion that because the constitution declares that nothing but gold and silver shall be a lawful tender in payment of a debt, a payment in anything of less value in the market than gold and silver at the time is *pro tanto* no payment.

I have shown that this, as a legal proposition, is not sustainable, and it could be easily shown to be most pernicious and unequitable in its operation on the government. Every one knows that debts contracted in the flush times which precede suspensions are more than discharged in equity by payments in current bank notes after suspension; because experience shows that such notes will not be current when they have depreciated more than 20 per cent., and although this reduced to specie would be much below the face of the note, yet even so reduced, it represents an absolute value greatly beyond the full amount of specie in flush times, and will buy more of every kind

of property than the whole amount would have bought. This, which every one knows to be true at present, was equally true in all past suspensions, and the cause of it is such as necessarily to make it true in all cases. It is, that the suspension annihilates absolutely a vast portion of what was previously recognized as currency, and as what remains has to do the office of the whole as the representative of value, that remainder is enhanced to the value of the whole. And the provision of the constitution which forbids any thing being a lawful tender but gold and silver, does so in furtherance of the hard-money policy which its framers were so solicitous to establish and perpetuate, and not because there is any natural equity in the exaction of the bond by a creditor of his debtor in times of suspension. Indeed it was foreseen that, without such a constitutional prohibition, the policy which it was so important to adhere to would be sacrificed, under such circumstances, to natural, equitable impulses in the legislatures.

IV. *The difference in the price of whiskey caused by the act of 24th July, 1814, taxing stills.* (3 Stat., p. 42.)

This claim is stated in the petition as follows: "That by the terms of the said contract, the said Elbert Anderson, deceased, undertook and agreed to furnish to the troops of the United States, whiskey at a certain price, being one of the component parts of the rations to be furnished under the said contract. That Congress on the 24th day of July, 1813, passed a law laying a duty on stills and boilers employed in distilling spirits from domestic materials during the year 1814. That the said law went into operation on the first day of January, 1814, and remained in operation throughout the whole remaining term of the said contract. That in consequence of the passage of the said law, the price of whiskey was enhanced to the amount of twenty cents on the gallon; and that the said enhanced price of whiskey continued from the date of the passage of the said law, to wit, the 24th day of July, 1813, throughout the whole term of the said contract. That from the said 24th day of July, 1813, up to the first day of January, 1814, the day on which the law went into operation, the said contractor furnished under his contract of 25th of February, 1813, 89,193 gallons of whiskey. That, owing to the said enhanced price of whiskey, the contractor was compelled to pay \$12,932 99 increased cost of the said whiskey, being 14½ cents a gallon for the amount of whiskey furnished as aforesaid.

"That from the said first day of January, 1814, up to the termination of his said contract, the said contractor furnished to the United States, 226,045 gallons of whiskey; that owing to the price of whiskey enhanced as aforesaid, he was compelled to pay \$32,776 52, the increased cost of the said whiskey being 14½ cents on the gallon for the amount furnished as aforesaid. That the said Elbert Anderson, deceased, claimed that he should be indemnified by the United States for the great loss so entailed upon him by the act of the United States, and that the United States have always refused or neglected so to indemnify him; wherefore, this claimant asks compensation and in-

démnity of the United States in the sum of \$45,709 51, together with interest on the same from the date at which the said claim accrued."

The proof offered in support of this item tends to show only that there was a rise in the price of whiskey after the passage of this law, and the claim is for the amount of this rise, without showing either that the rise was due exclusively to that cause, or that Anderson, in fact, paid the difference, and without making any allowance to the United States for the effect which the tax on whiskey must have had in preventing the manufacture of whiskey, and so reducing the price of grain, and thus reducing the cost to him of all the other component parts of the rations furnished by him to the United States.

1. The claimant proceeds on the idea that he may assume that the tax in question was a specific duty equivalent to the differences in the price of the article shown in the evidence. Whereas the price has no necessary connexion with the amount of duty, and might have been less after than before the imposition of the duty. The evidence shows that it varied after the imposition of the duty, and rose before any duty was imposed. The tax not being direct and specific on the whiskey, but on the means of producing it, it would require complete and authentic statistics to estimate the rate of the tax per gallon, a computation not attempted in this case, and perhaps not practicable.

2. There is no evidence that Anderson bought the whiskey after the tax went into effect, or otherwise paid the tax. The law was in force for but five months of his contract, and he was probably supplied under contracts previously made; and, if so, his sub-contractors lost the difference caused by the rise. There is no proof how this was, but the probabilities, looking at his course of dealing, are rather that others lost the difference than that he did.

3. There is no proof as to the effect of the tax on the other component parts of the rations furnished by Anderson. And as it is only because it was calculated to diminish the supply, that it affected the price of whiskey, it must have had a corresponding effect in reducing the price of grain, upon the price of which depended the cost of the meat, bread, &c., which formed the other component parts; and allowance should be made for this, if the enhanced price of whiskey is to be charged to the government. And this too was considerable; at all events, either from this or some other cause, Anderson's profits on his contract were so great, that he charges General Scott and other officers, in his letter on p. 265, with being actuated by malice towards him on account of the great fortune he was supposed to have made on it.

4. But if the amount of the tax on whiskey per gallon was ascertained, and it was shown how much was paid by Anderson on the whiskey supplied to the army, he would not be entitled to have it refunded. He claims exemption on the ground that the effect was to diminish by that amount (stated by him to be 14½ cents per gallon) the contract price, and thus to vary or violate the contract, which, it is insisted, it is equally inadmissible for a State as for an individual to do.

The question presented is one of construction; whether the contract

either expressly or by necessary implication exempts from taxation the property which the contractor buys to fulfil his contract with the government? It is contended that the contract does exempt the whiskey from taxation by necessary implication, because it stipulates that the government shall pay say 50 cents a gallon for the whiskey, whereas it pays in fact but $35\frac{1}{2}$ cents if subject to taxation. This is conclusive, if this contract is to be construed as comprehending all the relations of the parties; and on this construction it would equally forbid the collection of the tax, whether imposed by a law passed before or after it was entered into. But if it is to be construed with reference to its object and to the relation of contractor established by it to the government, and not to extend to or modify contracts made for other objects, as for example, that which established the relation of citizen and government between them, it is equally immaterial whether the tax is imposed before or after the making of the contract; because, being made without reference to this relation, it does not limit any present or future exercise of the taxing power founded on this relation.

It is not contended that if the act had been in force when the contract was made, that if the contract is so worded as to imply any exemption from the tax. This concedes that it was made without any saving whatever on account of taxes, and renders it unnecessary to recur to the words of the contract to demonstrate that it contains no allusion to the subject, it follows that it was made subject to the existing law which allowed the government to tax this other property at its discretion. Nor is there anything peculiar in this construction arising from the connexion of the government with the contract. It is precisely as if one man had bargained with another for the sale of articles at a particular price, who should also be bound to the other party by another contract, for a different consideration, to pay him a per centage on such articles. It would not be assumed that the per centage was included in the price. As if one should come to a tenancy which obliged him to pay as rent \$10 a head for the horses raised on the farm to another who was under contract to buy them of him at \$100 each; it would scarcely be thought an answer to the demand for rent to say that it was inconsistent with the contract for the sale of the horses, and would, if enforced, reduce the price agreed to be paid by the contract of sale, unless there was some language in the contract of sale which showed that the contract for rent was considered in making it, and the rent taken into account in fixing the price.

The obligation to pay taxes is annexed to every tenure in consideration of protection, and, like the rents reserved in the case supposed, is assumed by the tenancy, and is unaffected by other contracts with the government which do not profess to limit or release it.

The Supreme Court gives this construction to a contract with the government in the case of the Providence bank *vs.* Billings and Pittman, 4 Peters, 514. The State of Rhode Island granted a charter to this bank in 1791, and in 1822 imposed a tax upon it at the rate of 50 cents upon every \$1,000 of the stock. The bank denied the legality of the tax, on the ground that it was a violation of the contract or charter, because, in this way, burdens were imposed on it additional

to those contained in the charter, which, if allowable, would authorize the State to destroy the bank indirectly, when it could not rescind or modify its charter directly.

But the court said there was no stipulation in the contract not to tax the stock, "and the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in maintaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear. The plaintiffs would give to this charter the same construction as if it contained a clause exempting the bank from taxation on its stock in trade. They contend that it must be implied, because the power to tax may be so wielded as to defeat the purpose for which the charter was granted.

"The proposition is that a power which is in itself capable of being exerted to the total destruction of the grant is inconsistent with the grant, and is therefore impliedly relinquished by the grantor, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal, and therefore its truth cannot be admitted in these broad terms in any case. We must look for the exemptions in the language of the instrument, and if we do not find it there it would be going very far to insert it by construction. The power of legislation, and consequently of taxation, operates on all the persons and property belonging to the body politic. This is an original principle which has its foundation in society itself. It is granted by all for the benefit of all. It resides in government as a part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature." (P. 563.)

This decision covers fully the question and the argument presented by the claimant in this case. The question here, as in the Providence bank case, is, whether property which is the subject of a contract between citizens and the government is impliedly exempt from taxation? And the argument is, that if it be not exempt the government may, by taxing it indirectly, vary its contract, when it is admitted that it could not modify it by any direct action. But the court says, "*we must look for the exemption to the language of the instrument*; and if we do not find it there it would be going very far to insert it by construction.

The example used by the court, on p. 562, to expose the fallacy of the argument when used by the bank, is equally applicable to this case. It is conceded on all hands, says the court, that land granted by the court may be taxed so as to destroy its value, without any one supposing the contract made with the grantee that he should enjoy the profits was violated.

The fact that the government is vendor in this illustration does not

prevent its application to this case in which it was vendee; because the effect of the tax on the individual contracting with the government is the same whether he be vendor or vendee. If he is vendor, he is required to advance the amount of the tax to the government before the sale. If vendee, he must pay it afterwards; and if the contract of sale by the government was a guarantee against taxes, it is equally violated by the requiring such payment after as before.

M. BLAIR.

IN THE COURT OF CLAIMS.

ANDERSON, administrator of ANDERSON, claimant.—No. 4, general docket.

Brief for the claimant upon the solicitor's objections in matter of law.

The contracts upon which this claim arises will be found at pages 9 to 17, inclusive, of the petition.

There are divers items embraced in the claim wholly independent of each other in matter of law and fact, though all growing out of the same contracts. There are others which are identical in character and principle, depending upon similar facts and like stipulations, but founded upon or growing out of the two contracts respectively.

The first in order in the petition and upon the solicitor's brief are the items No. 1, *a* and *b*; the former arising under the contract of 1811, the latter under that of 1813. They are for the value of certain casks, barrels, &c., in which the claimant's intestate made certain deposits of quantities of provisions, according to the exigencies of the third article of each of the said contracts, respectively, (petition, pp. 10 and 15,) and which said casks, barrels, &c., were retained and used by the United States, and were never returned to the contractor.

To the petition, in respect of these items, the Solicitor objects—

1st. That "*neither time, place, nor person is named, with regard to the delivery of these casks, &c.*"

This is rather an objection of form than of substance. If it should prevail it would lead, in this and similar cases, to a very irksome and expensive prolixity in the petition.

But there does not seem to be any ground whatever for it in the present case. It is apparent that the best evidence of deliveries in question must be in the possession of the government. Those deliveries were made at public posts by official order; and it is not in the nature of things that there should be any difficulty in the way of taking issue for want of further specification, or through apprehension of any surprise. It is not suggested by the solicitor that *any* casks or barrels so placed on deposit were ever returned to the contractor. On the contrary, he insists that this was never in the contemplation of the parties. The official accounts, therefore, of all such deposits under these two contracts must exhibit all the desired particulars.

2d. He objects that the allegation of usage made by the claimant in support of his demand for the value of the casks, &c., is insufficiently

made, because, although it is alleged (at page 2, petition) "*that by the universal practice of the United States under previous contracts, and by the various contemporaneous decisions of the heads of departments, the United States were bound to allow separate compensation for such casks, &c.,*" yet it is not distinctly stated that such "previous contracts" were "*similar to this.*"

It is submitted that the fair and reasonable construction of the petition leaves no ground in point of fact for this criticism, and that in matter of law it is immaterial at this stage of the cause. If the fact of usage be material, (which will be considered hereafter,) the court will not reject the proof of that fact, any more than of any other fact, whether imperfectly averred or not, which may tend to the just decision of the claim.

3d. The remaining objections urged against these items purports to go to the root of the matter, and to deny all liability whatever in the premises.

It is objected, first, that the contract does not expressly assume such liability; and the absence of such assumption is relied on as raising a presumption against any *assumpsit* in law.

It is objected, secondly, that, upon a general view of the whole contract, and of its operation, it appears that the contractor must have looked for and found his compensation for the value of the casks, &c., containing provisions not issued by him, in the dispensation from the trouble and expense of issuing the rations, as he might have been required to do.

It is objected, thirdly, that the petitioner shows merely a variation from the contract, for which he is not entitled to any additional compensation, because he acquiesced in it, and gave no notice of any claim for such additional compensation.

It is objected, fourthly, that he bound himself to make these deposits when required, and that they could not be made except in casks, &c., and therefore that he bound himself to furnish the casks, &c., without further compensation.

It is objected, fifthly, that he made no demand for the casks, &c., after their contents had been discharged.

And, finally, it is objected that, whatever usage may have prevailed with respect to similar contracts prior to and at the time of entering into this contract, it is plainly unlawful to allow the petitioner any compensation whatever for the casks, &c., in the present case, and such allowances upon the other contracts referred to were themselves unlawful.

Other suggestions upon the brief are not noticed here, because they are supposed to be inapplicable to the present stage of the case.

1. It is true that the contract does not expressly stipulate that payment shall be made for the casks, &c. But the supposed presumption by no means follows.

The principal duty undertaken by the contractor was "*to supply and issue*" rations. It was an incident to the discharge of this duty that the contractor should remain in possession of his casks, barrels, packages, &c. This was not necessary to be expressed. It was inherent in the very nature of his undertaking. This is admitted by

the solicitor (p. 2) when he says, "*He did not, therefore, issue the provisions as provided, &c., otherwise the casks would have been returned to him,*" &c., &c. Accordingly, it is not under this main branch of the contract that these items arose. But it was also stipulated (Art. 3) that he should, when required, make deposits at fortified places and military posts of supplies, not exceeding three months in advance, for the troops, &c., at such places and posts.

As to these deposits, it was provided by supplementary articles, appended to each of the contracts, (see petition, pp. 12 and 17,) that the government should have the right to call upon the contractor to issue them in rations, in which case he should be allowed 12½ per cent. for wastage, &c., and one cent for every ration, as compensation for issuing the same.

This is the branch of the contract under which these items arise.

Now, if the omission to stipulate that the casks, &c., should remain the property of the contractor, in the other branch of the contract, did not (as is conceded) affect his right to that property, how could it affect such right under this branch? Although not *bound* to issue the rations from public deposits *at all events*, yet he was bound to do so when required—and this was at the option of the government. When so issuing them, would he not, in like manner, be entitled to the casks, &c.? This is also conceded. (Solicitor's brief, p. 2.) But how entitled, if they were not his property? Not by way of compensation, for it is expressly stipulated that the additional *one cent per ration* shall be his full compensation for that service. It is clear that, as to this question, there is no distinction between the cases of issuing generally, issuing from deposits, and depositing without issuing. In neither case could the contractor claim the casks, &c., except as *his property*. In the first and second cases, it is conceded that they were his, notwithstanding the silence of the contract. The same principle makes them equally his in the third case.

2. The second objection is not only met by the suggestions already made, but by others which readily occur.

It assumes that the omission to call upon the contractor to issue the rations was a benefit to him; that it dispensed him from a burdensome duty. This assumption is not warranted by the contract. He had no duty to perform with regard to those deposits until specially called; and when the duty thus arose, the compensation for it was specially provided for. It is to be presumed that the compensation was fair and reasonable. The omission to impose the duty simply deprived the contractor of the opportunity of earning this additional fair and reasonable compensation. If he had earned it, the property in the casks, &c., would not thereby have been changed; neither can the want of opportunity to earn it affect that property; nor is the issuing of rations, or the compensation therefor, in any manner involved in the present question.

3. It is not perceived how the objection as to "variation from the contract" and "acquiescence," and failure to give notice of claim for additional compensation, can apply to these items of claim. There is no variation from the contract. Nothing like it is pretended by the claimant. On the one hand, if by the usage with reference to which the contract was made, the casks, &c., if not returned, were to be

paid for, that is no case of variation. On the other hand, if the contract neither expressly nor impliedly assumed such liability for the United States, it is equally no case of variation, but simply the case of an implied assumpsit upon the use and enjoyment by the United States of property belonging to the contractor not embraced in the contract. In such a case no notice could be necessary.

4. This objection (in connexion with which the 5th may be considered) asserts that the 3d article of the contract, in binding the contractor to make deposits of supplies, bound him to provide everything necessary to accomplish that purpose; and concludes that whatever was thus necessary became the property of the United States. Without stopping to define more accurately the principle to which the first member of this argument refers, it seems enough to deny the conclusion founded upon it. It would by no means follow that property of the contractor would become property of the United States merely because it was necessarily used by the contractor in fulfilling his contract as to other property. The contract was for rations. The particular stipulation of the contract was for the deposit of rations in public storehouses, &c., to be issued thence by the storekeepers, &c., or by the contractor, at the option of the government. To fulfil the contract of deposit, it was not at all necessary, in any view of it, that the contractors should do more than allow to the government the use of the casks, &c., for such reasonable time as might be required for the consumption of their contents. When the rations were issued, whether by the contractor or by the United States, the casks, &c., were his property, free from any further use or enjoyment by the United States. If issued by himself, and he voluntarily failed or neglected to take the casks, &c., he could have no claim for their value. But if issued by the United States, the case is entirely different. In that event the fact of issuing is not at all brought to his notice. No opportunity is afforded him of reclaiming his property. He is not at liberty to interfere. The time when and the place where are equally reserved for the discretion of the government. The contract contemplates the removal of such supplies from post to post, at the will of the government, by its own agents and at its own expense; and in the nature of things it could never have been intended that under such circumstances the contractor should be obliged to have an agent following the deposits, or constantly remaining with them if retained at the original public place of deposit, so as at his peril to take notice when his property was ready to be surrendered to him. On the contrary, the rule in all analogous transactions would require that the notice should come from the other party. The usage of the government, which the petition avers and offers to prove, is in accordance with this view of the legal obligations of the parties.

6. The last objection is, that, conceding the usage to be as alleged, and to have been established before and at the time of entering into these particular contracts, yet that such usage itself was unlawful, and that under these contracts the contractor can claim nothing for his casks, &c. No reasoning is specially adduced in support of this objection. It implies an assertion, perhaps, that usage cannot be appealed to in cases of government contracts; or possibly it may be

limited to the assertion that these particular contracts cannot be affected by such usage.

It is submitted that neither assertion is well founded. First: It is well settled that the doctrine of usage is applicable to government contracts generally: (*U. S. vs. MacDaniel*, 7 Pet., 1; *U. S. vs. Fillebrown*, ib. lib., 28; *U. S. vs. Rippler*, ib. lib., 18, &c., &c.) And ordinarily all the rules which apply to contracts between individuals, apply equally to contracts between the government and the citizens. Will it be denied that evidence of usage of the trade would be admissible, as between individuals, to show that a contract for the sale of ten thousand gallons of whiskey, at a stated price per gallon, did not embrace the value of the casks in which it should be delivered? or that a building contract did or did not embrace certain particulars? So far is the doctrine carried, that even express and unambiguous words in a contract in writing are controlled and varied by it, (*Uhde vs. Walters*, 3 Camp., 16; *Roberts vs. Money*, R. & Mood., 75; *Roberston vs. Clarke*, 1 Bing., 445,) even to the extent of converting "*one thousand*" into "*twelve hundred*." (*Smith vs. Wilson*, 3 B. & Ad., 728.)

Parties are always presumed to contract with reference to the usage which prevails with respect to the matter of the contract. Such usage may add to a contract stipulations not contained in it, on the ground that the parties may be supposed to have had these stipulations in their minds, as part of their agreement, when they put in writing the other part to which the usage annexed such stipulations. (*Hutton and Warren*, 1 M. & W., 475; *Mills vs. Bank U. S.*, 11 Wheat., 431; *Renner vs. Bank Columbia*, 9 Wheat., 581; *Bank Washington vs. Triplett*, 1 Pet., 25, and numerous other cases.) So in regard to interest. The contract to pay it may be implied for the usage of a place, or of a trade, (*Meech vs. Smith*, 7 Wend., 315,) or from the course of dealing between the parties, (3 Comst., 502; 1 Barb., 235,) or from the practice of one party, if that be known to the other party. (*McAlister vs. Reah*, 4 Wend., 483; 8 Wend., 109.)

No reason presents itself against the application of these principles to the case at bar, and none has been suggested by the Solicitor. In matters of contract, the United States have been held to all the responsibilities of private parties. In the case of the *U. S. vs. The Bank of the Metropolis*, (15 Pet., 377,) the court say: "When the United States, by their authorized officer, become party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued." And so with regard to all other contracts.

Upon their face these contracts are restricted to the *supplying and issuing of rations*, and to the *depositing of rations*. It is the component parts of the ration, specifically enumerated, which are contracted for, and the price is fixed at so much per ration. The claimant undertakes to show an established usage, with reference to which both parties contracted, whereby, as an incident to this contract, he had reserved to him the property in the casks, &c., containing the rations, to retain them when he issued the rations himself, and to be paid their

reasonable value when they were deposited with the government, under the third article of the contracts, and not returned to him.

Whatever may be the effect of this evidence when produced, it seems, upon the clearest principles, admissable when offered.

No. 1, c.

This objection applies to the items for the value of casks, &c., destroyed by the enemy and lost by means of the United States troops respectively. These items are so clearly within the terms of the sixth article of the contract, if the casks, &c., were property of the contractor, that nothing further seems necessary to be added to what has already been said.

No. 2.

Upon the claim for damages on protested bills the Solicitor waives all further question until the proofs are taken.

No. 3.

The claim to be indemnified for the depreciation of treasury notes in which payments were made under the contract at times when such notes were at $8\frac{47}{100}$ per cent. and 11 per cent. below specie.

To this the Solicitor objects that these payments could only have been made to the contractor, he being "willing to accept the same in payment:" and he relies upon the terms of the act of 24th February, 1815, (3 Stat., 215.)

He makes the question turn then upon the true construction of this act; and he interprets it as an attempt on the part of the United States to take advantage of the necessities of their creditors by extorting from them acquittances in full upon receiving the nominal amount of the debts justly due them in depreciated paper. This is a hard thing to say of any person, natural or political. It is a downright imputation of dishonesty. We do not so understand the statute.

At the time of the passage of this law, although the government was not in a condition to discharge its debts promptly in constitutional currency, yet it was not so affected in its credit as to apprehend that its treasury notes would be really worth less than par in the ordinary transactions of life. Doubtless apprehensions were entertained that interested attempts would be made to depreciate their value, and hence the direction that they should be issued and paid out at par. And inasmuch as no act of Congress could make anything but gold or silver a legal tender, it was a very proper provision of the law that no payment in treasury notes should be made, except with the consent of the creditor. This is the only fair and legitimate scope of the 8th section of the act of 1815. By these intents the court will construe its terms. To go further and to say that, besides these legitimate intents, the legislature had in view an infamous speculation, the elements of which were to be, on the one hand, the depreciation of the public credit, and, on the other, the ruinous straits to which that depreciation should reduce the citizen to whom his government was indebted for the daily bread of its army and navy—to go this far, would be to adopt a rule of construction as novel as it would be injuri

ous alike to the character of the legislature and the rights of the citizen.

The truth is, that the provisions of the 8th section of the act of 1815 were not novel at the time, nor were they peculiar to that and the preceding period in our history. They will be found in the act of 1812, ch. 111, sec. 4, (2 stat., 767;) in the act of 1813, ch. 27, sec. 5, (2 stat. 802;) in the act of 1814, ch. 18, sec. 5, (3 stat., 101;) in the act of 1815, (*u i supra*;) in the act of 1837, ch. 2, sec. 4, the next issue, (5 stat., 202;) and in all the subsequent acts authorizing the issuing of treasury notes, the provisions of the act of 1837 are declared to be in force, down to the act of 1847, ch. 5, (9 stat., 119,) in which (sec. 4) these provisions are expressly repeated at length.

So that if it could be imagined that Congress was actuated by any motive of base speculation upon an embarrassed state of the public treasury, existing or apprehended, in 1815, what is to be said in view of this legislation, extending over our whole history from 1812 to 1847—the latest issue of treasury notes—and a period of great national wealth and prosperity?

It must be evident that the true, as they are the only legitimate, intents of the law were those above suggested, viz: to require the notes to be issued at par, to prevent speculation upon the government, and to declare that payment in notes, instead of gold and silver, should not, as it could not, constitutionally be made against the will of the creditor. This leaves the question of legal and moral responsibility open in the present case. The petitioner offers to show that there was, in fact, no option given to the contractor; that the supposed election was merely illusory; that he was compelled to take the treasury notes, or to take nothing—in other words, to submit to absolute ruin, bankruptcy, and disgrace. He offers to show the real *bona fide* value of the notes, at the time they were paid to him, was such only as is stated in the petition; that, in fact, he was not paid the debt due to him by the amount of the sum claimed in this behalf; and that, although the government agreed that he should be fully paid, and in issuing to him these treasury notes intended and believed that they were equivalent to gold and silver, they were not so, and did not, in fact, in law, or in conscience, discharge the debt.

No. 4, *a* and *b*.

These items are founded upon an interference by the United States (one of the parties to the contract) with the subject-matter of the contract, whereby, indirectly, a portion of the contract price was reserved to the United States and withheld from the contractor. No such intention is imputed to the government; but this is the precise effect of the legislation in question.

The substance of the case is, that on the 25th February, 1813, the contractor agreed with the United States, amongst other things, to furnish rations of whiskey at certain stipulated prices, founded upon existing market rates, but, it may be presumed, embracing a reasonable calculation of the fluctuations of the market, and other ordinary risks in such cases. At all events, these risks are, in the nature of things, involved in every such contract. But in five months after the

date of the contract, and within a few weeks after it went into operation, the United States passed an act of Congress levying a tax upon whiskey, whereby the price of that article was directly enhanced to such a degree as more than to absorb all the profits of the contract in that particular. To the extent to which the contractor was obliged to purchase that article to supply the United States, he was, in substance, forced by the United States to abate, in their favor, so much of the contract price as the tax amounted to. Now, in considering the effect of this legislation upon the contract, it is to be borne in mind that it is the voluntary act of one of the parties to the contract, directly adding to the burdens assumed by the other party in the very matter of the contract, and indirectly, to a considerable extent, discharging the obligations of the party so interfering. Even in the case of contracts between private parties, entered into on both sides in good faith, and without any knowledge or suspicion of impending increase of duties upon the commodities so contracted for, so great have the injustice and hardships of the case appeared to the British Parliament, that the acts of 17 and 18 Vic., chap. 28, sec. 4 and 17 and 18 Vic., chap. 27, sec. 7, expressly provide that, in all such cases, the increased duty shall be added to the price of such commodities, and may be recovered accordingly. These statutory provisions were doubtless necessary for the relief of contractors in contracts to which the government was no party. They are founded in natural justice and right. But no such provision of law can be necessary where the government itself is the party to be supplied with the commodities upon which, pending the contract, it chooses voluntarily to levy the additional duty. It is impossible not to see that the right to insist upon the contract price, under such circumstances, involves the right to absorb the whole contract price under the name of duties, and thus to have the goods without any price whatever. As between individuals, in such a case, there can be no doubt that equity would relieve; and it is easy to imagine cases in which, upon facts no stronger, (but without the public duty and motive of government,) a contract might be vacated for fraud.

Neither of the cases upon the Solicitor's brief announces any such principle as that which is necessary to reject these items of claim. The case in 4 Peters only recognizes the power to tax a trading franchise, whose charter contained no exemption, and implied none; and the case in the 11th is the celebrated case of the Boston bridges, in which the monopoly claimed by the Charles River Bridge Company was denied upon principles not at all affecting the present question, as will plainly appear upon an analysis of the case.

As to the various suggestions upon the brief, touching the measure of damages, the extent of compensation, and the difficulties in the way of arriving at satisfactory conclusions as to some of the items of claim, they will be considered at a subsequent stage of the cause.

It is believed that all the objections in law have been now briefly adverted to; at least sufficiently to indicate the line of oral argument.

BADGER & CARLISLE,
Of Counsel for Claimant.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

HENRY JAMES ANDERSON, administrator of ELBERT ANDERSON, deceased.

JUDGE BLACKFORD delivered the opinion of the court.

On the 7th of November, 1811, W. Eustis, Secretary of War, and Elbert Anderson, the intestate, entered into an agreement under seal. The following is the substance of so much of that agreement as concerns this suit:

The intestate agreed to supply and issue all the rations that should be required of him for the United States at the places where the troops were or might be stationed, marched, or recruited within the State of New York, (Niagara and its dependencies excepted,) and the State of New Jersey, from the 1st of June, 1812, to the 31st of May, 1813; which rations were to consist of certain specified articles, and to be paid for at certain specified prices.

It was agreed also, in the third article of said agreement, that supplies should be furnished by the intestate at the fortified places and military posts that were or might be established in the States of New York and New Jersey, upon the requisition of the commandant of the army or a post, in such quantities as should not exceed what should be sufficient for the troops to be there stationed, for the space of three months in advance; that if the intestate should be required to deposit provisions at one place or post, and should afterwards be required to move them, to be delivered at another place or post, the expense of transportation should be borne by the United States; and that all supplies should be originally delivered at the posts where they might be required, without expense to the United States.

It was further agreed, in the sixth article, that all losses sustained by the depredations of an enemy or by means of the troops of the United States, in articles intended to compose rations to be issued under this contract, being the property of the contractor, as well as in other property necessarily used in transporting the same, should be paid for at the contract price of the rations, or the component parts, and at an appraised value of the other articles, on the deposition of one or more credible characters, and the certificate of a commissioned officer when the same could be obtained, ascertaining the circumstances of the loss, and the amount of the articles for which compensation was claimed.

It was further agreed, in the 10th article, that advances of money to the intestate on account of supplies to be furnished, and of money paid for supplies on his failure to furnish them, should be accounted for by him, and the balance against him, if any, should be paid to the United States immediately after the expiration of the term of the contract, with interest from the time of such expiration; that if, on settlement, a balance should be found due the intestate for rations supplied pursuant to the agreement, the same should be immediately paid; and that no unreasonable or unnecessary delay, on the part of

the officers of the United States, should be given to the settlement of his accounts.

There is a supplement to the above agreement which states that when issues should be required from the public deposits General Dearborn might call on the intestate for that purpose; that an inventory should be taken of such supplies; that the intestate should receipt therefor, and account to the United States for all the supplies receipted for, deducting twelve and a half per cent. for wastage, leakage, &c., and receive one cent for each ration which he should issue.

There is a subsequent agreement under seal, dated the 25th of February, 1813, between John Armstrong, Secretary of War, and the intestate. This second agreement is similar to the first, except that the rations were to be supplied and issued for the year commencing on the 1st of June, 1813, and ending on the 31st of May, 1814, and that their price, and the limits within which they were to be furnished, differed from those mentioned in the first agreement.

The first breach alleged in the petition is a breach of the contract of the 7th of November, 1811. That breach is as follows:

That the contractor, in addition to said provisions, furnished to the United States a large number of casks and packages, boxes and barrels, wherein the provisions were contained, which were retained and used by the United States, and were never returned, and were worth \$13,972 30.

This breach applies only to the third article aforesaid of the agreement, which article provides for the deposit of supplies at fortified places and military posts. These supplies were to consist of certain proportions of flour, beef, pork, &c., as the component parts of the rations, and were to be paid for at a fixed price per ration. But the agreement is silent in regard to the casks, barrels, &c., in which the component parts of the rations were necessarily to be contained, in order that they might be transported to the places of deposit, and deposited and preserved in the storehouses which the government was to provide for the deposits. There is no doubt but that very large supplies were deposited and paid for under the contract; but the evidence is not definite as to the number of the casks, boxes, &c., which contained the supplies. The present claim for the value of those casks, boxes, &c., was rejected in 1814 by the Accountant of the War Department on the settlement of the contractor's accounts as not coming within the terms of the contract. Its allowance was also refused by the Secretary of War. The same claim was presented in 1823 to the Third Auditor and was rejected by him.

The second breach assigned by the petition is a breach of the contract of the 25th of February, 1813. This breach is very similar to the one just noticed relative to the previous contract. It raises the same question that the other does, namely, whether, under such an article as the third one before referred to, the government is liable, in addition to the price of the rations deposited, to pay the contractor for the casks, boxes, &c., containing the component parts of such rations. The claim under the last mentioned breach, amounting to \$10,921 90, was presented to the Third Auditor on the 16th of June,

1824, in a supplementary account, and was rejected by him on the 24th of the same month.

The aforesaid claims for the value of casks, boxes, &c., arising under both of said contracts of 1811 and 1813, were afterwards presented to Mr. Calhoun, Secretary of War; and on the 12th of August, 1824, he gave a written opinion against them. These claims were afterwards presented to Congress, and on the 10th of March, 1826, the Committee of Claims of the House made an elaborate report against their validity. The same claims are now brought before this court, and our opinion is that they cannot be sustained.

It appears to us that there is nothing in the agreements to show that said casks, boxes, &c., were to be a separate charge. The component parts of the rations were to be furnished at designated posts, on the requisition of the commander, in sufficient quantities for the troops there, for not exceeding three months in advance, and to be delivered there without expense to the United States at a fixed price per ration, the government furnishing the necessary storehouses. The fair inference is, the agreements being silent on the subject, that the casks, boxes, &c., which were indispensable to the making of the deposits, were included in the prices of the rations. This view is strengthened by the fact that there is no evidence tending to show that the prices paid were not a full compensation for all that was received. In a case where the plaintiffs contracted to sell to the defendant ten tons of oil at 31s. and 6d. per cwt., to be free delivered by the plaintiffs to the defendant within a certain time, one of the judges, in his opinion, said: "If the tender were made at an unreasonable place, could not the purchaser refuse to receive the goods there? The sale note does not express that the oil is to be delivered *in casks*; but would the purchaser be bound to receive it if offered to be delivered *in bulk*? (Startup vs. McDonald, 2 Manning and Granger, 395, per Maule, J.)

We think that, from the evidence in the case before us, and for the above reasons, the United States are not bound to pay the charge now made for the casks, boxes, &c., in which the component parts of the rations were contained.

The Third Auditor, in his opinion of the 24th of June, 1824, says: "The question whether a contractor is entitled to charge to the United States the value of the casks and boxes in which his provisions are contained when he makes a deposit under his contract, has been repeatedly decided in the negative. In Mr. Anderson's own case, such was the decision when his accounts were settled in the year 1815. (See the accountant's letter to the Secretary of War, dated the 8th of July, 1815.) The form in which the present charge is made being so far different from the former as that its amount is lessened by a deduction of the amount of casks and boxes received back by Mr. Anderson, does not affect the principle on which the opinion is founded. Contractors are not entitled to such allowance. This claim is, in my opinion, inadmissible."

The Secretary of War, Mr. Calhoun, in his opinion, says: "The order to deliver provisions in depot seems necessarily to comprehend the barrels and casks, &c., in which they are contained; and such, I understand, has been the construction under the contract system from

its commencement to its termination in 1819, and which at this late period ought not to be changed, even if there were reasonable doubts, as there are not, as to its correctness. It is to be presumed that the invariable construction of contracts, under a system so long in operation, would be known to the contractors as well as the government, and the acquiescing in it of both may be fairly presumed."

The third breach which the petition assigns is a breach of the second contract aforesaid. This breach states that during the execution of said contract casks and packages containing the rations to be issued to the troops were lost or destroyed to the value of \$4,805 86; that \$1,901 12 of the said casks and packages were captured and destroyed by the enemy, and \$2,904 75 of the said casks and packages were lost and destroyed by the troops of the United States in descending the St. Lawrence.

This claim was not made by the contractor until the lapse of between eight and nine years after it is alleged to have accrued—that is, not until the 12th of August, 1823. The facts, according to the report of the Third Auditor, are as follows: "The barrels and boxes here charged contained the whole quantity of provisions received by Robert Swartwout, quartermaster general, on the 22d of October, 1813, and were placed in different boats descending the St. Lawrence. The greater part of these provisions were returned to Mr. Anderson for issue to the troops; the remainder were captured and destroyed by means of boats being stove, and by the troops of the United States. The contractor was paid the gross amount of said losses at the same rate as if the provisions had been actually issued."

This claim for the barrels and boxes containing said provisions is founded on the sixth article of said second agreement, which is the same with the sixth article of the first agreement before stated. This article provides for the payment by the United States of rations belonging to the contractor, and other property necessarily used in their transportation, when captured or destroyed as aforesaid. The claimant contends that said barrels and boxes must be considered as having been used in transporting the rations, and are therefore within said sixth article; but that is not so. We understand this article to mean the wagons and horses and other means employed to convey the provisions, with the barrels and boxes containing them. It was not intended that such barrels and boxes should be, under any circumstances, a separate charge. The Third Auditor rejected this claim; and it was rejected also by Mr. Calhoun, the Secretary of War. The contractor was paid by the government for the provisions lost or destroyed at the same rate as if he had issued them, which, at most, was all he was entitled to.

The fourth breach assigned in the petition relates to the tenth article of both said agreements. This breach states that during July and August, 1814, the contractor transmitted his accounts to Washington, by which accounts he was in advance a sum exceeding \$200,000; that on the 15th of October, 1814, he transmitted a further account, showing a balance due him of \$263,004 55½; that during July, August, September, and October, the United States refused or neglected to settle said accounts, the delay being unnecessary and

unreasonable ; that when the accounts were finally settled, the said balances were found to be correct, and were paid to an amount exceeding \$200,000 ; that on the 27th of October, 1814, the contractor drew two drafts on the Secretary of War, one for \$150,000, payable at sight, and the other for \$50,000 at fifteen days' date, which were returned protested for non-payment. The claimant, therefore, demands ten per cent. damages, that is, \$20,000 on the protested drafts, together with interest from the date the claim accrued.

The substance of this claim is, that the contractor's accounts sent to the War Department, though unsettled, showed that the indebtedness of the government exceeded the amount of the drafts when they were drawn, and that the government wrongfully suffered the drafts to be protested, and thus became liable to the contractor for ten per cent. damages on their amount, with interest on the same.

That doctrine is not sustainable. The case of *Rollin vs. Stewart*, 25 Eng. C. L. and Eq. Rep., 341, relied on by the claimant, merely decides that if a banker, having sufficient money of a trader on deposit, refuse to pay the latter's check, the refusal is a ground of action for damages. But that grows out of the peculiar relation in which such parties stand to each other as banker and customer. The rule does not apply to other cases of debtor and creditor, and especially where (as when the drafts in question were drawn) the amounts between the parties are unsettled. There is no evidence in this case of any special authority to draw the drafts; but, on the contrary, the following letter to the contractor shows there was none :

“WAR DEPARTMENT, *October 31, 1814.*

“SIR: Your letters of the 26th and 27th instant have been received. As soon as your accounts are acted upon and settled by the Accountant of this department, in the accomplishment of which no time will be lost, any balance which may be due you shall be promptly paid. It is impossible to accept or pay your drafts until a settlement of your accounts is made.

“I have the honor, &c.,

“JAMES MONROE.”

But the claimant contends that there was unnecessary and unreasonable delay in settling the accounts ; for which delay damages are recoverable.

It is impossible, at this distant day, to ascertain distinctly whether there was such objectionable delay or not. The situation of the business, during the time, in the accountant's office cannot now be known. There is on the subject the following letter, dated October 20, 1814, from the accountant to the contractor :

“SIR: I have received your letter of the 17th, with its enclosure. The adjustment of your accounts as late contractor cannot, from the great pressure of business, be taken up at this time. When it shall be practicable to enter upon the subject you will be informed.”

That the contractor's accounts, as transmitted for settlement, were very incorrect appears from the following letter :

“ DEPARTMENT OF WAR,
“ Accountant's Office, March 10, 1815.

“ SIR: Your account for supplies furnished under contract dated November 7, 1811, has this day been adjusted, and a balance found due thereon to the United States of one thousand eight hundred and thirteen dollars and thirty-one cents, which sum will be carried to your debit in account under contract of February 25, 1813. The aforementioned balance differs from your statement in a sum of \$27,940 63, which you will find fully explained in a statement of differences here enclosed for your government.

“ I am, &c.,

“ TOBIAS LEAR.

“ ELBERT ANDERSON, Esq.”

“ DEPARTMENT OF WAR,
“ Accountant's Office, March 14, 1815.

“ SIR: Your account for supplies furnished under contract dated February 25, 1813, has this day been adjusted, and a balance found due you thereon of one hundred and eighty-one thousand two hundred and forty-three dollars and fifty-seven cents, which sum has accordingly been reported to the Secretary of War for payment. The aforesaid balance differs from your statement in a sum of \$84,865 45, which is fully explained in a statement of differences here enclosed for your government.

“ I am, &c.,

“ TOBIAS LEAR.

“ ELBERT ANDERSON, Esq.”

There is also, as regards the delay complained of, the following official statement of the Third Auditor in his aforesaid report in 1824: “ The contract states that no unreasonable or unnecessary delay shall arise on the part of the public in making the settlement after the accounts shall have been rendered. It is believed that no unreasonable or unnecessary delay did arise on the part of the accountant. In the correspondence between the officer and Mr. Anderson it appears that the vouchers for Mr. Anderson were generally rendered in due season, but instances did occur when it became necessary to return vouchers for correction, and to suspend others for explanation. His accounts, settled in March, 1815, were not finally rendered until October 19, 1814; and, considering the immense extent of his transactions, it is believed that the account could not have been more speedily disposed of.”

We think that the claim on account of delay relative to said settlements is not sustained by the evidence.

The fifth breach applies to both contracts, and is substantially as follows: That by the terms of said contracts the United States agreed to pay for said rations a certain price in money; that the contractor was compelled to wait ten months from the period at which his accounts were tendered for settlement before payment of the balances due by said accounts was tendered to him; and that he was then com-

pelled to receive said payment in treasury notes, which were from eight to eleven per cent. below par; and that he thereby suffered a great loss, to wit, the sum of \$22,214 20. In the claimant's brief this claim is described as follows: "The claim to be indemnified for the depreciation of treasury notes, in which payments were made under the contract at times when such notes were at $8\frac{4}{100}$ per cent. and 11 per cent. below specie." (See brief, p. 7.)

This claim was not made until June, 1824, when it was presented to the Third Auditor, and was rejected. One of said balances, which was \$56,756 42, was paid, on the 1st of September, 1815, and the other, which was \$188,632 91, was paid on the 11th January, 1816, both payments being made in treasury notes bearing interest. When the first balance was paid, treasury notes were, at New York, about one and a half per cent. better than New York bank notes, and were from nine to ten per cent. discount as to specie; and when the second balance was paid treasury notes were at a discount of about one per cent. for New York bank notes, and at a discount of from nine to ten per cent. for specie. The act of Congress of the 24th February, 1815, under which said treasury notes were issued, contains the following section:

SEC. 8. "That the Secretary of the Treasury be, and is hereby, authorized, with the approbation of the President of the United States, to cause the said treasury notes to be issued at the par value thereof in payment of services, of supplies or of debts, for which the United States are or may be answerable by law, to such person and persons as shall be willing to accept the same in payment; and to deposit portions of the said notes in the loan offices, or in State banks, for the purpose of paying the same to the public creditors as aforesaid; and to borrow money on the credit of the said notes, or to sell the same at a rate not under par; and it shall be a good execution of this provision to pay such notes to such bank or banks as will receive the same at par, and give credit to the Treasurer of the United States for the amount thereof on the day on which the said notes shall thus be issued and paid to such bank or banks respectively." (3 Statutes at Large, 215.)

Treasury notes issued under that act were accordingly paid by the government to those of its creditors who chose to receive them at par in discharge of their demands, and among the creditors to whom such notes were so paid was the said contractor, Mr. Anderson. After the passage of the said act of Congress, viz: on the 15th of May, 1815, Mr. Anderson wrote to the Secretary of War as follows: "Sir: I have a well-grounded hope that you will now fulfil the pledge made by the Hon. James Monroe in his letter of 31st October, 1814, and extinguish this claim by giving six per cent. stock at your offer of ninety-five of debt for one hundred of stock, or give me the amount in treasury notes authorized to be issued by the law of February 24, to all such creditors who have given the United States supplies, and are willing to receive treasury notes at their par value."

And in a letter of August 22, 1815, to the Secretary of the Treasury, Mr. Anderson says: "I therefore again have the honor to solicit from you an early reply, whether or not I can be paid in the current

money of New York or in treasury notes at par any proportion of the great balance now due as may be within your power as Secretary of the Treasury to grant." The balances were afterwards paid to Mr. Anderson in treasury notes as aforesaid. We think there can be no doubt but that his receipt of the treasury notes at par in payment of the sums due put an end to the demand. There is no more right now, on the part of the contractor, to claim a discount on the treasury notes he received, than there was for the contractor himself to claim it at the time he received the notes.

The sixth breach which refers to the second contract, states that on the 24th July, 1813, Congress passed an act laying a duty on stills and boilers employed in distilling spirits from domestic materials, to take effect on the 1st of January, 1814; that in consequence of that act the price of whiskey was greatly increased throughout the whole term of said contract, and that the contractor therefore was compelled to pay, as an increase of the cost of the whiskey furnished, the sum of \$45,709 51. This act of Congress, the petitioner alleges, violated that part of the contract which fixed a certain price for the whiskey part of the ration.

Whiskey being one of the component parts of the rations required to be furnished, a very large quantity was, no doubt, furnished by the contractor to the United States and paid for by them under the contract. There is not, however, any certain testimony as to the number of gallons furnished; and though said act of Congress may, and no doubt did, cause a rise in the price of whiskey, there is no definite testimony as to what that rise was. But we do not think the act was a breach of contract as alleged. The contract was merely to pay certain prices for the rations to be furnished, specifying the prices of the component parts of the rations; and it must be considered, in the absence of anything in it to the contrary, as having been intended to be subject to the taxing power of Congress. And, indeed, if there had been a provision in the contract exempting the stills and boilers aforesaid from taxation, it would have been void for the want of authority in the Secretary of War to agree to such a provision. The Solicitor refers to a decision of the Supreme Court of the United States. The case is this: The legislature of Rhode Island, in 1791, chartered the "Providence Bank," the charter containing no stipulation exempting the stock from taxation. There were other banks afterwards chartered. In 1822 the legislature imposed a tax on the stock of the banks of the State. The Court held that though the charter of the Providence Bank was a contract, the act of 1822 did not impair its obligation. The principle recognized in that case is, that the taxing power of a State is not affected by any contract made by the State, in which the deliberate purpose to abandon the power does not appear. (*Providence Bank vs. Billings*, 4 Peters, 514.) That case, so far as it applies, is against the present claim. The Solicitor refers, also to the case in the same Court, of *The Charles River Bridge vs. The Warren Bridge*, 11 Peters, 420. That case, too, so far as it applies, is against the claim. In 1823, and again in 1824, this claim was presented to the Third Auditor, and was rejected.

The seventh breach is in regard to the second clause of the third

article in the second contract. That breach states that whilst certain provisions were being transported to the mouth of Genesee river as required, General Hull required them to be transported to Williamsville, and they were accordingly so transported by the contractor; that the expense of such transportation to Williamsville was \$12,303 37, which the United States have refused to pay.

This claim was presented to the Third Auditor on the 12th of August, 1823, and was rejected by him. The following are the remarks of the Third Auditor: "On the settlement of Mr. Anderson's account, made the 27th June, 1815, he received a credit for \$5,259 52, being the amount then charged by him for transporting provisions from Genesee river to Williamsville, Batavia, and Cambria, on the order of General Hull of the 9th January, 1814. The provisions for which the transportation is now claimed, Mr. Anderson states, were intended to be deposited at Genesee river, agreeably to the order of the Secretary of War; but before they were delivered at that place, the provisions were ordered to be removed, in consequence of the invasion by the enemy, and is in addition to the transportation already admitted to his credit in the settlement before mentioned. (See his remarks accompanying the abstract and vouchers for the transportation now claimed.)

"In the settlement made and referred to in the above remarks, I am of opinion that Mr. Anderson has received all the credit on this account that he was entitled to. The order of General Hull of the 9th January, referred to as authority for making the charge, it will be found, is limited to the provisions then actually in store; and the amount already allowed, corroborated by the storekeeper's certificate and by the statement made by Mr. Anderson, above referred to, covers all the provisions then deposited. The charge is, therefore, inadmissible."

There being no evidence relative to this claim, except what is contained in the above report of the Third Auditor, the claim must, of course, be rejected.

The eighth breach states that, in execution of the second contract, one of Mr. Anderson's agents was compelled, on the requisition of General Dearborn, and without Anderson's knowledge, to receive a large amount of provisions, not of proper proportions, which had been left in deposit by Mr. Porter, a previous contractor, and also a large amount of damaged provisions captured from the enemy; that said provisions contained, among other things, 306,338 flour rations, which flour was credited to Porter at five cents a ration, and charged to Anderson at seven and a half cents a ration; and that for the loss so sustained the sum of \$9,190 14 is claimed.

A claim for the above amount was presented by Anderson to the Third Auditor in August, 1823. The claim then was for damages sustained in receiving an excess of flour from the deposits made by Augustus Porter, and from provisions captured, &c., and which he was compelled to receive by order of the commanding general. The Auditor rejected the claim. It was afterwards submitted to the Secretary of War, Mr. Calhoun, who also decided against it. The following, in a letter of August 12, 1824, to Mr. Anderson, is Mr. Cal-

houn's decision : " No. 7 is a claim for damages sustained in receiving an excess of the flour part of the ration from a deposit made by Augustus Porter, the previous contractor, and provisions captured from the enemy, which were damaged, and which you state you were compelled to receive by the order of the commanding general. Against this claim it is objected by the Third Auditor that your agent acknowledged the receipt of the provisions without mentioning anything of their being damaged, or making objections as to the inequality complained of as to the flour part of the ration, and that they were passed on his receipt to the credit of the former contractor and to your debit, after deducting $12\frac{1}{2}$ per cent. for wastage and one cent a ration for issue ; against which you object that the order of General Dearborn was peremptory and left your agent no discretion in receiving them, and that you protested against the order as soon as you were apprised of it, and claimed suitable and equivalent arrangements for those sacrifices which you had to make in supplying the deficiency in parts of rations. I have turned to the only order of General Dearborn that I can find, which does not appear to me to be any more than a request that Mr. Thorn, your agent, should receive the provisions, and it appears to me that his receiving them under the letter of General Dearborn, without making any objection, fairly authorizes the contractor to be charged with the same. Besides, it does not appear that you had sustained any damage by the flour not being in a good condition. There is no evidence to show that the whole of it was *not issued*. In addition to these remarks, I understand, by your letter of the 15th of July, 1815, to General Dearborn, that your objection was to being called on to fill the deficiency of parts of rations left in deposit by Judge Porter, and that your claim for damages was confined to that particular. Even were the claim in that view to be well founded, it would still be necessary to prove, before it could be allowed, that you sustained damage by *supplying the deficiency of the parts of the rations*, and the amount of such damages."

The claim for said sum of \$9,190 14 is not sustained by the evidence before us.

The ninth breach which relates to the second contract, states that in September, 1813, the contractor, Anderson, repaired to the northern frontier to issue from deposits there according to his contract, but that he was deprived of the benefit of doing so by General Hampton, who stated his intention to supply the troops without resort to the contractor ; that the department afterwards admitted this wrong, and agreed to allow the contractor therefor, as damages, $12\frac{1}{2}$ per cent. on the deposits, the per centage allowed as aforesaid for wastage and leakage, and the one cent per ration for issue ; that the per centage, amounting to \$9,843 75, was paid, but payment of the one cent per ration, amounting to \$4,500, was refused.

There is not the slightest evidence that the department, as this breach alleges, ever made an agreement to pay said per centage and one cent per ration in consequence of said interference of General Hampton. The Third Auditor's report on this claim, made in 1824, is as follows : " Mr. Anderson originally charged the United States, in his accounts rendered in 1814, \$14,343 75 for damages sustained by

breach of contract on the part of General Hampton, by his appointing an issuing commissary from September 15 to December 15, 1813, a period of ninety days, calculating for 5,000 men, and charging $12\frac{1}{2}$ per cent. and one cent per ration, the advantage he would have derived had he been permitted to make the issues. Of this sum \$9,843 75 was allowed him on the settlement of his account as a full compensation for the breach of contract aforesaid. The principle upon which this sum was allowed appears to be that of $12\frac{1}{2}$ per cent. on the estimated amount of provisions issued, as charged by Mr. Anderson. The one cent per ration also charged, and forming the difference between his charges and that allowed, was not considered admissible, it is presumed, on the ground that he had not incurred the expense of issuing, and therefore was not entitled to the allowance. I do not consider myself authorized to make any further allowance." The claim was also rejected by the Secretary of War.

It is contended that Anderson was entitled to the whole sum he would have received had the rations been actually issued by him; but that is not so. He was only entitled to the difference between that sum and the cost of issuing the rations—that is, to the net profits of issuing them; and there is nothing in the case to show that those profits would have exceeded the \$9,843 75 which have been paid to him. The claim, therefore, is not sustained.

The tenth and last breach assigned in the petition relates to the second contract. It states that the contractor received a large quantity of provisions from the stores that had accumulated in the neighborhood of Sackett's Harbor for the purpose of providing the troops with provisions during their descent down the St. Lawrence; that the contractor was entitled, by the contract, to $12\frac{1}{2}$ per cent. leakage and wastage on the gross amount of deposits thus received, and one cent per ration for the expense and trouble of issuing the same; that a large amount of said provisions, during said descent, were lost or destroyed, for which the contractor received compensation; that after deducting the amount of perquisites on the provisions destroyed, there remained due the contractor the sum of \$5,749 69 as perquisites on provisions actually received by the contractor, and by his agent issued to the troops, with which sum the United States refused to pay.

The perquisites above spoken of are the $12\frac{1}{2}$ per cent. on the amount of the provisions received from the government deposits to be issued, and the one cent per ration for issuing them, provided for by the contract. Now, if the provisions in question were received by the contractor from the government deposits, as the petition seems to say, we must presume (the contrary not appearing) that, according to the settled practice, said perquisites were deducted from the amount received from the deposits at the time of the receipt, the contractor thus receiving the perquisites in advance. In that case, there would be, of course, no ground for this claim. But if, on the other hand, the provisions were not received from the government deposits, but belonged to the contractor, and were issued from his own stores, then there is no ground for his claim, because the contract in such case makes no extra allowance for wastage and leakage or for

issuing the rations, the contractor receiving the contract price for supplying and issuing the rations, and nothing more. So that, in either point of view, the claim is without foundation. This claim was rejected, in 1824, by Mr. Hagner; and Mr. Secretary Calhoun, soon afterwards, also rejected it. The following is Mr. Calhoun's opinion; "Number 9, supplementary claim for the allowance of $12\frac{1}{2}$ per cent. for leakage and wastage, and one cent for issue, for provisions issued to troops descending the St. Lawrence. In no view which I can take of this claim does it appear to me to be well founded. If the provisions were drawn from depot, placed on board the public boats, it is manifest that the contractor has already been allowed the amount claimed; but if they were provisions from the contractor's own stores, it is equally clear that he was entitled to a credit only on the issue of the provisions, without any allowance for wastage or leakage, or one cent per ration for issuing."

We have now noticed all the claims set out in the petition, and consider, for the reasons given, that none of them are well founded. Our opinion, therefore, is, that the claimant is not entitled to recover.